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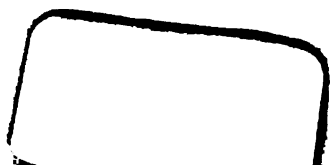
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Timberland, Ebenezer

THE  
HISTORY and PROCEEDINGS  
OF THE  
HOUSE of LORDS  
FROM THE  
RESTORATION in 1660,  
TO THE  
PRESENT TIME.

CONTAINING,  
The most Remarkable MOTIONS, SPEECHES,  
DEBATES, ORDERS and RESOLUTIONS  
Together with all the PROTESTS during that Period  
AND THE  
Numbers *Pro* and *Con* upon each Division  
WITH  
An Account of the Promotions of the several PEERS, and  
the State of the PEERAGE in every Reign.  
Connected with the Transactions of the COMMONS,  
and HISTORY of the TIMES  
AND  
Illustrated with HISTORICAL NOTES and OBSERVATIONS.  
Together with the DEBATES in the Parliament of SCOTLAND  
relating to the UNION.

To each VOLUME are added proper INDEXES.

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VOLUME the FIFTH, from 1735, to 1759.

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v. II.  
1735-6.

T H E  
HISTORY and PROCEEDINGS  
OF THE  
HOUSE of LORDS,

WITH THE  
DEBATES and PROTESTS therein,

From the Accession of King GEORGE the First.

The SECOND SESSION of the SECOND PARLIAMENT of  
King GEORGE II.



*A N.* 15, 1735-6. was opened with a gracious *Anno 9. Geo. II.*  
Speech to both Houses as usual (which see in *1735-6.*  
*Chand. Hist. Ann. 9. Geo. II. 1735-6. P. 103*)  
and which, as soon as his Majesty was with-  
drawn, was taken into Consideration by the  
House of Lords, and the same being read to  
the House, it was mov'd as follows, *viz.* To order that  
an humble Address be presented to his Majesty, to return  
the Thanks of this House for his most gracious Speech  
from the Throne: To express the just Sense this House  
hath of his Majesty's great Concern for the Balance of  
*Europe*, his Vigilance to prevent a general War, and  
to maintain the Security and Commerce of his King-  
doms: To declare their Satisfaction in his Majesty's Perseve-  
rance to pursue these great Ends, by endeavouring to bring  
the Contending Powers to an Accommodation, and the  
well-grounded Hopes which they always conceived, that the  
good Offices of his Majesty and the States General would be  
attended with real and beneficial Effects: To congratulate  
his Majesty on the pleasing Prospect of approaching Tran-  
quillity, and to express the great Satisfaction of this House  
upon

Motion for an  
Address of  
Thanks.

1799. Geo. II. upon the gracious Communication made in his Speech touching the Preliminary Articles between the Emperor and France, and the joint Resolution taken thereupon by his Majesty and the States: To acknowledge, with the greatest Gratitude, his Majesty's tender Care of his People, in preserving to them the Blessings of Peace; and to declare that this House sees with Pleasure, in our present Situation, the happy Effects of the extraordinary Supplies of late Years granted by Parliament: To return his Majesty, the Thanks of this House, for the Orders given for a Reduction of his Forces; assuring him, in the strongest Manner, that this House will zealously and cheerfully concur in all such Measures as shall be necessary to secure the Safety of his Majesty's Kingdoms, and to continue the just Influence of his Crown among the Powers abroad: To promise his Majesty, that this House will, to the utmost, promote good Harmony and Unanimity at Home, and demonstrate, by all their Actions, how much they have at Heart the effectual Support of his Majesty and his Government, the Preservation of the Protestant Succession, and the Peace and Prosperity of their Country.

Amendment offered to the said Motion.

To this Motion several Objections were made; and in particular it was proposed to leave out, in the fifth Paragraph, these Words, *viz. And to declare, that this House sees with Pleasure, in our present Situation, the happy Effects of the extraordinary Supplies of late Years granted by Parliaments.*

The Arguments made use of in Support of this Amendment, were in Substance as follow, *viz.*

Arguments the said Amendment.

‘ My Lords, by the ancient Usage of this House, no Speech from the Throne was ever taken into Consideration the same Day it was made. Our Ancestors were not so complaisant as to make any Compliments even to the Throne itself, without having first maturely weighed the Subject upon which they were to make those Compliments; and therefore they always appointed a Day for taking his Majesty's Speech into Consideration; in order that those Lords, who knew nothing of the Speech till they heard it from the Throne, might have Time to peruse it, and to consider what might properly be said, by way of Return. This, my Lords, was the ancient Custom, and this, I must think, was more consistent with the Honour and Dignity of this House, than the Method we have lately fallen into, of taking his Majesty's Speech immediately into our Consideration, and agreeing to such an Address as some Lords may be pleased to propose, before we can possibly have

‘ have Time to consider whether it be proper or not. For Anno 9. Geo. II. 1735-6.  
 ‘ this Reason I could wish we would return to our ancient  
 ‘ Custom, and, instead of agreeing or disagreeing to the Motion now made, appoint a Day for taking his Majesty’s  
 ‘ Speech into our Consideration, and order the House to be  
 ‘ summoned for that Purpose.

‘ As I knew nothing of the Contents of his Majesty’s  
 ‘ Speech, till I heard it from the Throne, it cannot, my  
 ‘ Lords, be presumed that I can state my Objections to the  
 ‘ Address now proposed, in such a regular Manner as I  
 ‘ might do, if a Day were appointed for our taking the  
 ‘ Speech into Consideration: I believe there are a great  
 ‘ many other Lords in the same Circumstances with me; and  
 ‘ although we had, in a private Manner, been fully informed  
 ‘ of the Contents of that Speech which was to be made,  
 ‘ yet I do not think it regular or consistent with the Dignity  
 ‘ of this House, to proceed upon any such private Information.  
 ‘ As Members of this House, we can have nothing under our  
 ‘ Consideration, nor ought we to form an Opinion or a Resolution  
 ‘ about any thing, till it has, in a proper and regular Manner,  
 ‘ been laid before the House; and, in this light, I am of Opinion  
 ‘ none of your Lordships can say, that you have fully and maturely  
 ‘ considered the Speech now before you; for my own Part, I am  
 ‘ sure I cannot; but, even from the little Time I have had to  
 ‘ consider the Speech and the Address now moved for, I am  
 ‘ sure I cannot pretend to say, that my Hopes have been  
 ‘ answered by the Peace that has been concluded, or by any  
 ‘ thing else that has happened; for I must say, I could never  
 ‘ form any Hopes from the Measures we have taken, or from  
 ‘ any Account of our late Transactions, that has been laid  
 ‘ before this House; and, I believe, there are many of your  
 ‘ Lordships, who have always been of the same Opinion with  
 ‘ me; therefore, if we resolve to mention in our Address, any  
 ‘ thing about our Hopes, I think we ought to say, that by  
 ‘ various hidden Causes, and extraordinary Incidents, Providence  
 ‘ has been pleased, without any Merit in us, to bring about a  
 ‘ Peace, far beyond our Hopes, and even contrary to our  
 ‘ Expectations. A Peace, my Lords, has, it is true, been  
 ‘ brought about, but I am very certain, we cannot say it is  
 ‘ a good Peace for this Nation; and I am much afraid, it will  
 ‘ not be so lasting as some People may perhaps imagine.

‘ I know, my Lords, it has always been said that no Expressions  
 ‘ in our Address of Thanks, for his Majesty’s most gracious  
 ‘ Speech from the Throne, can any way tie up or controul the  
 ‘ future Proceedings or Resolutions of this House;

Anno 9. Geo. II.  
1735-6.

yet I hope we shall always take Care, not to put any Expression or Allegation in an Address of this House, which the Generality of the World knows to be false; and for this Reason, I cannot agree to put any Words into our Address, which may seem to insinuate, that the Peace was owing to any Preparations made by us, or to any Supplies granted by former Parliaments. Can it be pretended, that there is the least Ground for any such Insinuation? Can it be said, that our adding 6 or 7000 Men to our Land-Forces, had so frightened *France*, as to make them give up any of those Pretensions they had seriously at Heart? Can it be alledged, that our Squadrons made them give up the Affair of *† Poland*, when the whole World knows, we never sent so much as one Ship into the *Baltic*? Or can it be said, that our Squadrons set Limits to any of their Designs in *Italy*, without ever appearing in the *Mediterranean*? My Lords, whatever his Majesty's Endeavours were, we may judge from the Event, that he could have no Hand in the Peace that has been concluded; for I am convinced his Majesty never did, nor ever would use the least Endeavour, for annexing to the Crown of *France* for ever, the whole Dominions of the Duke of *Lorraine*: This, my Lords, is a Cession, which this Nation, as well as the rest of *Europe*, may soon have Reason to repent of: It is a Measure, which I am sure his Majesty would never propose or countenance; and if any of his Ministers did so, I call upon them now to declare it: But, my Lords, I believe no one of them will dare to own any such thing; and as this was apparently the Motive, which induced *France* to sacrifice all her other Views, as well as most of the Views of her Allies, how can we say in our Address, with any Appearance of Truth, that the Peace was owing to our Preparations, or to any of his Majesty's Endeavours? Or how can we from thence declare, that we see with Pleasure, the happy Effects of the extraordinary Supplies of late Years granted by Parliaments? Therefore, if your Lordships are resolved to agree immediately upon an Address of Thanks, I hope you will leave these Words out of your Address; for I cannot think any of your Lordships will say, you see with Pleasure the Dominions of *France* enlarged, by the Accession of such an extensive and convenient Country as that of the Duchy of *Lorraine*.

The

† *Dantzick* had been surrendered to the *Russians*, July 7. King *Stanislaus* having made his Escape, thro' innumerable Difficulties and Dangers, some Days before: And an Asylum being soon after provided for him, by the Cession in Form of the noble Duchy of *Lorraine*.

The Answer was in Substance as follows, *viz.*

Anno. Geo. II.  
1735-6.

• Whatever the ancient Custom may have been, my  
• Lords, with relation to the appointing a Day to take his  
• Majesty's Speech into Consideration, it is certain this  
• Custom has been long laid aside ; for it must be granted, Answer.  
• that not only for a great many Years, but even for a  
• great many Reigns, the Custom and Usage of this House  
• has always been, to take his Majesty's Speech immediately  
• into our Consideration, and to order an Address, by  
• Way of Return thereto. This, I say, my Lords, has  
• been the uninterrupted Custom for many Reigns ; and now  
• to deviate from that Custom, or to reassume an old, ob-  
• solete Custom upon the present Occasion, would certainly  
• look, as if we disapproved of some of the Measures lately  
• taken by his Majesty, and would be in some Manner offer-  
• ing a sort of Indignity to him ; which I am persuaded no  
• one of your Lordships has the least Inclination to offer ;  
• and for this Reason I hope, neither the noble Lord who  
• proposed it, nor any other of your Lordships will insist up-  
• on the Question, for appointing a Day to take his Majesty's  
• Speech into Consideration.

• If there were any thing very dark and intricate in his  
• Majesty's Speech, or in the Motion now made to you for  
• an Address ; if any thing in the Address could be of any  
• great Consequence, or have any great Effect upon future  
• Proceedings, there might be some Reason for our taking  
• some Time to consider his Majesty's Speech, as well as the  
• Address proposed to be made upon the present Occasion :  
• But, in my Opinion, and, I believe, in the Opinion of  
• most Lords of this House, there is not the least Obscurity  
• or Ambiguity in any Part of his Majesty's Speech, or of  
• the Motion now made to us ; and as no Expression we can  
• put into the Address, nor any Compliment we may make  
• upon such an Occasion, can have the least Influence upon  
• any of our future Proceedings ; therefore we have the less  
• reason to be so mighty cautious of what we shall say upon  
• the present Occasion.

• That Peace is more desirable than War, is what I be-  
• lieve, will be granted by every one of your Lordships ;  
• and it will, I believe, likewise be granted, that the  
• Balance of Power in *Europe* was lately in great Danger of  
• being over-turned, and that this Nation was lately in the  
• most imminent Danger of being involved in a bloody and  
• expensive War. The restoring of the Peace of *Europe*, the  
• preserving and re-establishing the Balance of Power, and  
• the preventing this Nation's being involved in a War, are  
• Effects



Anno 9. Geo. II.  
1735-6.

Effects which all Mankind must acknowledge to be happy, and they are Effects, which have been lately, some Way or another, brought about : For my own Part, I am convinced they are the Effects of the extraordinary Supplies of late Years granted by the Parliament of this Kingdom, and I shall continue to think so, till I see it demonstrated, that they have proceeded from some other Cause. The adding of 6 or 7000 Men to our Land Forces, was not in itself, it is true, of any great Consequence to *France*, or to any other Power of *Europe*; but the making of that Addition, and our contracting with the King of † *Denmark* for some of his Troops, shewed that we were in earnest, and that we resolved to enter into the War, for supporting the Balance of Power in *Europe*, as soon as we should observe, that either of the Parties had any Views, which were inconsistent with the Preservation of that Balance ; in which Case we could, and we certainly would have entered into the War, with a Body of 70,000 Men, or perhaps 170,000 in case of Necessity : This, my Lords, *France* very well knew, and this, perhaps, made them give up some of those Pretensions, they had at first seriously at Heart, or at least prevented their having any Pretensions seriously at Heart, which were inconsistent with that, they saw us preparing to support and defend.

‘ Altho’ none of our Squadrons appeared either in the *Mediterranean* or the *Baltic*, yet, my Lords, I am firmly persuaded, that our fitting out and preparing powerful Squadrons, and our having them ready to sail either to the *Mediterranean* or the *Baltic*, as we should find Occasion, not only set Limits to the Designs of *France* and her Allies in *Italy*, but actually laid them under a Necessity, of departing from that Scheme, relating to the Partition of *Italy*. which they had formed to themselves at the Beginning of the War : And as to the Affair of *Poland*, tho’ we did not send a Ship into the *Baltic*, yet we know it was publicly reported, that our having fitted out such a powerful Squadron, prevented the *French* from sending their *Brest*-Squadron to the Relief of *Dantzick* ; so that if there was any Truth in that Report, it may be properly enough said, that our Squadrons made them give up the Affair of *Poland*.

‘ With respect, my Lords, to the Treaty of Peace that has been concluded, I shall not pretend to determine, by what Means, or by whose Endeavours it has been brought about ; but I cannot think it a Peace of such dangerous Consequence, as some are pleased to represent : ‘ The

† See the Treaty here refer’d to in the preceding Volume, P. 341.

' The whole Dominions of *Lorrain* are, it is true, to be annexed to the Crown of *France* for ever ; but it cannot be said, that *France* thereby gets any Addition of Power : For did she not formerly take Possession of all those Dominions whenever she pleased ? So that, tho' *France* by this Treaty of Peace, acquires a new Right or Title, yer it cannot be said, that she acquires any new or additional Power : But as this is an *Affair* quite foreign to our present Purpose, I shall only add, that I am convinced, there is not a Lord in this House, who imagined four Months since, that it was possible for the Emperor to have made so good a Peace, unless the maritime Powers had actually engaged in the War, and had thereby enabled him to force the *French* and their Allies to agree to reasonable Terms. Yet, my Lords, we find this extraordinary Event has been, some Way or other, brought about, without engaging either of the maritime Powers in the War ; and, in my Opinion, this Event, extraordinary as it is, is entirely owing to the Wisdom of his Majesty's Conduct, and the good Harmony which has always subsisted between him and his Parliament ; which Harmony, if it be continued, will certainly establish and preserve that Peace, which has been brought about, and will at last, make this a happy and a flourishing Kingdom ; therefore, I hope your Lordships will agree to the Motion that has been made you, without any Amendment or Alteration.'

Anno 9. Geo. II.  
1735-6.

The Reply was to this Effect, *viz.*

' My Lords, tho' the Custom of appointing a Day for taking his Majesty's Speech into Consideration, had been laid aside for a much longer Time than it really has, yet as it was a good and a decent Custom, it ought to be re-assumed ; and our re-assuming an ancient Usage, which all the World must allow to be a good one, can never look like a Disapprobation of any of his Majesty's Measures, much less can it be looked on as offering any Indignity to him : But, my Lords, when we hear such an Argument made use of, when we hear it said, that our re-assuming the ancient Dignity of this House, will be offering a sort of Indignity to his Majesty, it ought to make us cautious of ever neglecting or suspending any of those Forms or Customs, which have been established by our Ancestors, for regulating the Proceedings of this House ; and this I hope your Lordships will take particular Notice of upon some future Occasion ; for if we be every Session, or every Parliament, giving up and never re-assuming, we shall at last

Anno 9. Geo. II. ' last have neither Decency nor Solemnity left in any of our  
 1735-6. ' Proceedings.

' As I have had no Time to consider either the Speech  
 ' or Motion, I cannot pretend to determine whether or no  
 ' there be any thing dark or intricate in either ; but the  
 ' easiest and most plain Speech that was ever composed, to a  
 ' Man who has not considered it, must be the same, as if it  
 ' were dark and intricate ; neither the one nor the other can  
 ' be understood, and no Man who regards his Character will  
 ' give an Answer, or agree to what he does not understand.  
 ' If there be nothing dark or intricate, either in the Speech  
 ' or Motion, the less Time will be necessary to consider them ;  
 ' but let both be as clear and intelligible as possible, it is rea-  
 ' sonable that those Lords, who heard nothing of the Speech,  
 ' till they heard it in this House, should have some Time to  
 ' consider it, before they be desired to give their Consent to  
 ' any Answer that can be made to it.

' With respect to the Consequences of what we may  
 ' happen to insert in our Address, or the Effect it may have  
 ' upon our future Proceedings, considering how precipitately  
 ' we are like to agree upon an Address, I could almost wish  
 ' it were a Thing of as little Importance, as it has been re-  
 ' presented ; but, my Lords, while this House preserves its  
 ' Honour and Dignity, while this Nation preserves its Free-  
 ' dom, the Address of this House will always be of great Con-  
 ' sequence, and will have a great Effect, not only upon our  
 ' own future Proceedings, but upon all the Affairs of the Na-  
 ' tion ; nay, upon all the Affairs of *Europe* in general. We are  
 ' not indeed, under any absolute Necessity of conforming in  
 ' our future Proceedings to every Thing contained in our Ad-  
 ' dress of Thanks, for his Majesty's most gracious Speech from  
 ' the Throne ; but still it must be granted, that what we say in  
 ' our Address, has an Effect upon our future Proceedings, and  
 ' has been often made use of, as an Argument against our  
 ' agreeing to Propositions afterwards made, because of their  
 ' being repugnant to what we had said in our Address.

' We all know, my Lords, that the Compliments made to  
 ' his Majesty upon any such Occasion, are generally under-  
 ' stood to be Compliments made to his Ministers ; and if, in  
 ' this Session, we should enter upon an Enquiry into the  
 ' Conduct of his Majesty's Ministers, and should from thence  
 ' discover that they had shewn no Concern for the Balance of  
 ' Power, that their Negligence or their Blunders had been  
 ' the Occasion of the late War, and that both the Security  
 ' and the Commerce of these Kingdoms, had been thereby  
 ' brought into the utmost Danger ; I must beg of your Lord-  
 ' ships to consider, how inconsistent it would look for this  
 ' House,

House, to come to any such Resolutions, after having at the Beginning of the Session agreed to the second Paragraph of the Motion now before you : And upon such an Occasion, would not this apparent Inconsistency be made use of as an Argument, would it not be a prevailing Argument against your coming to any such Resolution ?

Anno 9. Geo. II.  
1735-6.

But this is not all : the Address of this House, as long as we preserve any Character or Respect in the Nation, will always have a great Effect upon the Minds of the People, and will, in some Measure, influence the Proceedings of the other House : Nay, my Lords, it will have an Effect upon the Conduct of all the Princes of *Europe*, and may induce them to come into such Measures, as may be highly prejudicial to the Interest of this Nation, and such as cannot be recalled or remedied, by any future Resolution of this House. With respect to our Conduct in the Interval of Parliament, foreign Powers may perhaps look upon it, as the Conduct of our Ministers, and not of the Nation ; and for that Reason, they may suspend entering into any Measures, or coming to any Resolutions to our Prejudice, till the Meeting of the next Session of Parliament ; but if they then see the two Houses of Parliament complimenting his Majesty's Ministers, and approving of all they have done, they will then begin to look upon our past Conduct, as the Conduct of the Nation, and will immediately take their Measures or their Resolutions accordingly. We have it, 'tis true, in our Power to depart from our Address by a future Resolution ; but, after the Resolutions of foreign States are taken, after they have concerted their Measures, we cannot make them depart from such Measures or Resolutions, by any future Resolution of ours ; and thus, by an ill-timed Compliment to his Majesty, or rather to his Ministers, we may involve our Country in great Difficulties, and bring it to the utmost Distress.

Peace, my Lords, is certainly a most desirable Thing, but it is not always more desirable than War : If at the End of King *William's* Reign we had thought a Peace at any Rate more desirable than War, not only this Nation, but perhaps the greatest Part of *Europe*, would long before now have been Slaves to *France* : We ought not therefore to be so extremely busy with our Congratulations upon the pleasing Prospect of approaching Tranquillity : We ought first to examine what sort of a Tranquillity we are like to have, and what the Consequences of it may be. I shall readily agree with the noble Lord, that the Balance of Power was lately in great Danger ; I shall likewise agree, that this Nation was lately in great Danger of being in-

Anno 9. Geo. II.  
1735-6.

‘volved in a bloody and expensive War ; but I cannot agree  
‘with his Lordship in thinking, that in either Case the  
‘Danger is quite over. On the contrary, I think the Ba-  
‘lance of Power is brought into more Danger by the Peace,  
‘than it was by the War ; because, if the War had conti-  
‘nued, it was in our Power to have recovered it from that  
‘Danger, whenever we had a mind ; but it will not be in  
‘our Power whenever we have a mind, to take *Lorrain*  
‘from *France*, or to get the Emperor, *Poland*, and *Muscovy*  
‘to join with us in that Undertaking ; and as *France* was  
‘before an Over-match for any Power in *Europe*, the Addi-  
‘tion of any thing, even the smallest Village, to that Crown,  
‘is a Step towards overturning the Balance of Power ; but  
‘the Addition of such a populous and fertile Province as the  
‘Dukedom of *Lorrain*, is certainly a most wonderful Stride.

‘I am surprized to hear it said, that *France* acquires no  
‘new or additional Strength by the Surrender of *Lorrain*. It  
‘is true, she generally took possession of it at the Beginning  
‘of a War ; but as that Country was generally rendered  
‘desolate by the War, she could reap little Benefit by it  
‘during the Continuance of the War ; and upon a Peace she  
‘was always obliged to restore it : Then again, while that  
‘Duchy continued in the Possession of its own Princes, and  
‘was a Part of the Empire, it was a Barrier for all that Part  
‘of the Empire situate between it and the *Rhine* ; because  
‘the seizing of any Place in *Lorrain* by *France*, was always  
‘looked on as a Declaration of War, by which the Princes  
‘of the Empire were alarmed, and had some time to put  
‘themselves upon their Guard : But *Lorrain* being now given  
‘up to *France*, its Towns will immediately be strongly for-  
‘tified, and numerous Garrisons kept in them, by which  
‘*France* will be enabled to surprise and take Possession,  
‘whenever she pleases, of all that Part of the Empire be-  
‘tween *Lorrain* and the *Rhine* ; so that all that Part of the  
‘Empire, will from henceforth be in the same Condition  
‘that *Lorrain* formerly was ; and if *Lorrain* was before to be  
‘looked on as a Part of the Kingdom of *France*, because it  
‘was in her Power to take Possession of it whenever she  
‘pleased, we must for the same Reason conclude, that from  
‘henceforth the County of *Deux Ponts*, a great Part of the  
‘Electorate of *Trèves*, of the Electorate of the Prince Pa-  
‘latine of the *Rhine*, of the Bishopric of *Spiers*, of the Bi-  
‘shopric of *Worms*, and several other Estates of the Empire,  
‘are to be looked on as Part of the Kingdom of *France* ; and  
‘therefore may hereafter be, without any Jealousy, absolutely  
‘surrendered to her, if ever the Doctrine should prevail, that  
‘there is no Difference between a violent Possession, and a  
‘rightful

' rightful undisturbed Possession. But, even with respect to *Lorrain* itself, the rightful, undisturbed Possession of it will add vastly to the Power of *France*; for even during the Continuance of War, tho' *France* had Possession of the Country, she possessed none of the Revenues; these having almost always been possessed by the Dukes of *Lorrain*; whereas the Revenues will be now much improved by its being no longer the Seat of War, and will belong to, and be levied by *France*, both in time of War and in time of Peace; from whence we may, with a great deal of Probability conclude, that a yearly Sum of at least 500,000 *l. Sterling*, will be added to the Revenue of *France* by the Accession of *Lorrain*; and as by the Situation of *Lorrain*, the Frontiers of *France* will be contracted, rather than enlarged, which will prevent her being obliged to keep up any greater Land Force than formerly, we may presume, that this whole Sum will be employed yearly towards increasing and keeping up her Naval Armaments; and how a Peace, which may so probably increase the Naval Power of our greatest and most dangerous Rival, can be called a pleasing Prospect to *Great Britain*, I cannot so readily comprehend. From these Considerations, my Lords, I must leave it to your Lordships, whether we ought to burst out in such Raptures of Joy on the pleasing Prospect of approaching Tranquillity.

' Now, my Lords, let us see how we stand with respect to our own Security and Commerce: A Peace is concluded, it is true, between the Emperor and *France*, but are we included in that Peace? There were before several Bones of Contention between us and *France*, as well as *Spain*, and I am afraid, they are no way diminished by our late Conduct. If by our powerful Squadrons we set Limits to the Designs of *France* and her Allies in *Italy*, or made *France* give up the Affair of *Poland*; if by our Preparations we prevented the King of *France* from establishing his Father-in-law upon the Throne of *Poland*, or the King of *Spain* from establishing his Son in the Dukedoms of *Tuscany*, *Parma*, and *Placentia*; can we expect that these Disappointments will be easily forgiven or forgot? And in case these Powers should make up the little Differences at present subsisting between them, and should join together in order to revenge themselves upon us, are we sure of the Emperor for an Ally? Have we, by our late Conduct, laid him under any Obligations of Honour or Conscience to fly to our Assistance; or upon what else does our Security depend? When to these Questions, my Lords, I have received a satisfactory Answer, I shall be ready to acknowledge, with

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the greatest Gratitude, the tender Care of his Majesty's Ministers for his Majesty's People, in preserving to them the Blessings of Peace; and to declare, that I see with Pleasure, in our present Situation, the happy Effects of the extraordinary Supplies of late Years granted by Parliament.

I have, my Lords, as great an Opinion of his Majesty's Wisdom and Conduct, as any Lord in this House; but for the Wisdom and Conduct of his Ministers, I have not perhaps, the same Esteem that some others may have; and since his Majesty's Wisdom and Conduct can never be brought in question here, since it is the Wisdom and Conduct of his Ministers only, that can come under our Consideration, I have treated the Subject the more freely. I shall always be fond of seeing a just and true Harmony between his Majesty and his People, as well as his Parliament; for, unless the Harmony between the King and Parliament be founded upon a Harmony between King and People, we can neither expect to meet with Trust or Confidence from our Allies, nor can we expect to spread Terror and Dread among our Enemies. Thus, my Lords, I have taken Notice of what I take to be amiss in the Motion now before you; I shall not insist, either upon delaying the Consideration of this Matter, or upon any particular Amendment; because, from what I have said, the Committee, who shall be appointed to draw up the Address, will be able to rectify the Motion; and I hope they will take Care to do it in such a Manner, as that the Address may be unanimously agreed to.

Question carried  
in the Affirmative.

The Question was then put, whether an Address should be made to his Majesty upon the foregoing Motion? And it being resolved in the Affirmative, without any Division, and ordered accordingly; a Committee was appointed to draw it up; who retired immediately into the Prince's Chamber, and having drawn up an Address, it was reported and agreed to the same Evening, and was as follows.

*Die Jovis, 15 Januarij, 1735.*

Lords Address.

*Most gracious Sovereign,*  
**W**E your Majesty's most dutiful and loyal Subjects, the Lords spiritual and temporal in Parliament assembled, beg Leave to return your Majesty our sincere and most humble Thanks for your most gracious Speech from the Throne. The Experience we have had of your Majesty's just Apprehensions of the Consequences of the  
2  
War,

' War, and of your Vigilance to prevent its becoming ge- Anno .9 Geo. II.  
 ' neral, filled our Minds with the strongest Assurances, that 1735-6.  
 ' the Preservation of the Balance of Power, and of the Safe-  
 ' ty and Commerce of your Kingdoms, were the governing  
 ' Motives of your Majesty's Conduct.

' These Principles, truly worthy of a King of *Great Bri-*  
 ' *tain*, we have seen exerted with a Perseverance superior to  
 ' all Difficulties, by your uninterrupted Endeavours to bring  
 ' the contending Powers to an Accommodation, in order to  
 ' the obtaining a general Peace: And when we considered  
 ' your Majesty's Firmness, and the Weight which this Na-  
 ' tion ought to have in the Affairs of *Europe*, we always con-  
 ' ceived well-grounded Hopes, that your Royal Wisdom, and  
 ' the good Offices employed by your Majesty, in Conjunction  
 ' with the States-General, would be attended with real and  
 ' beneficial Effects.

' Permit us, Sir, on this Occasion, to congratulate your  
 ' Majesty upon the agreeable Prospect of approaching Tran-  
 ' quillity, which you have had the Goodness to lay before  
 ' us; and to profess the great Satisfaction we feel, on your  
 ' having communicated to us, that the preliminary Articles  
 ' agreed upon between the Emperor and the most Christian  
 ' King, appeared, upon a due Examination, to be such, as  
 ' induced your Majesty, and the States, by a joint Resolu-  
 ' tion, to declare your Approbation thereof, and your Rea-  
 ' diness to concur in a Treaty to be made for bringing this  
 ' Work to Perfection.

' The Union and Harmony, which hath so happily subsisted  
 ' between your Majesty and that Republic, will, we trust,  
 ' be productive of such farther good Consequences, as may  
 ' effectuate a general Pacification: And the glorious Ex-  
 ' ample, which your Majesty hath held forth to other  
 ' Princes, of preferring the Love of solid and honourable  
 ' Peace to the Views of restless Ambition, together with the  
 ' amicable Interposition of common Friends, will, we doubt  
 ' not, prevail entirely, to put an End to the present  
 ' Troubles.

' Your Majesty's tender Care of your People, in preserving  
 ' to them the Blessings of Peace, while other Countries have  
 ' been harrassed with War, calls for our most thankful Ac-  
 ' knowledgments, which we beg Leave to lay at your Royal  
 ' Feet.

' The extraordinary Supplies of late Years necessarily  
 ' raised by your Parliament, however unwilling to bur-  
 ' den their Fellow-Subjects, have been the Result of their  
 ' just Confidence, that all Powers reposed in your Ma-  
 ' jesty,



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‘ jeſty, would be made uſe of only for the Honour of your Crown, and the Welfare of your People.  
‘ It is with the greateſt Pleaſure, we now ſee the happy Effects of theſe Meaſures, in our preſent Situation; nor could we entertain the leaſt Doubt, but, that your Maſteſty would improve the firſt Opportunity to leſſen this Expence, as far as Prudence and the Poſture of Affairs would permit. In this View, we beg Leave to return our unfeigned Thanks for the Orders, which your Maſteſty hath graciouſly been pleaſed to give for making a conſiderable Reduction of your Forces both by Sea and Land; and we cannot accompany thoſe Thanks with a more becoming Proof of our Gratitude, than by aſſuring your Maſteſty, as we moſt ſincerely do, that we will zealouſly and chearfully concur in all ſuch Meaſures, as ſhall be neceſſary to maintain the Security of your Kingdoms, and to continue the juſt Influence of your Crown among the Powers abroad.  
‘ We are deeply ſenſible of your Maſteſty’s unwearied Labours to make us a happy People. Nothing ſhall be wanting, on our Part, to render thoſe paternal Labours effectual, by promoting good Harmony and Unanimity at home, and by demonſtrating, in all our Actions, how ſtedfaſtly we have at Heart, the zealous and vigorous Support of your Maſteſty and your Government, the Preſervation of the Proteſtant Succeſſion in your Royal Houſe, and the Peace and Proſperity of our Country.’

Which Addreſs was next Day preſented to his Maſteſty by the Houſe in a Body, and his Maſteſty returned the following moſt gracious Answer.

The King’s  
Answer.

My Lords,  
*I Return you my Thanks for this dutiful and affectionate Addreſs. Nothing can give me ſo ſenſible a Pleaſure, as the Satisfaction you ſhew in my Endeavours for the Repoſe of Europe, and the Care I have taken of the Peace and Welfare of my Kingdoms. As I rely, with the greateſt Confidence, on your Support in the Purſuit of theſe great Ends; ſo you may always depend on my ſteady Perſeverance in ſuch Meaſures, as may moſt effectually promote and ſecure the Eaſe, Commerce, and Proſperity of my People.*

Speakers,

The principal Speakers in the above Debate for the Amendment to the Motion were, the Earl of Strafford, the Lord Carteret, the Earl of Cheſterfield, and the Lord Bathurſt; and the principal Speakers againſt it were, the Duke of Newcaſtle, the Lord Hervey, &c.

On

ON the 16th of *April*, the || Mortmain Bill was read a first time in the House of Lords, a second time on the 20th, and on the 5th of *May*, the said House resolved itself into a Committee upon the same, when the chief Debates happened both in relation to the Merits of the Bill in general, and in relation to the several particular Clauses.

Before the House resolved itself into the said Committee, the Lord *Gower* moved for an Instruction to receive a Clause in favour of the Universities, much of the same Nature with that proposed in the House of Commons, with respect to the giving them a Liberty to exchange the small Livings they were, or might be in Possession of, for others of a greater Value, so as the Number of Advowsons in the Possession of any College, might never exceed the Number prescribed by the Bill; in which he was supported by the Lord *Bathurst*, the Earl of *Abingdon*, the Earl of *Strafford*, &c. but upon the Question's being put, it was carried in the Negative.

After the House had resolved itself into the Committee, the Earl of *Strafford* took Notice that the Words (to Uses called charitable Uses) in the Preamble, seemed to cast some sort of Reflexion upon those charitable Foundations which had been lately established, none of which, he hoped, their Lordships would look on as a public Mischief, and therefore he proposed leaving them out, in which he was seconded by the Earl of *Abingdon*, and the Bishop of *Salisbury*; but this Amendment was disagreed to, because some of the late Dispositions made to such Foundations seemed to be a little extravagant, and even the Foundations themselves, if they had not already, might very soon become a public Mischief.

The Bishop of *Salisbury* likewise took Notice, ' That, by some Words in the first enacting Clause, the charitable Foundation called Queen *Anne's* Bounty, which he hoped was looked on by all their Lordships as a most useful and necessary Foundation, would be disabled even from taking any Sum of Money or other personal Estate; for by that Clause, as it then stood, no Sum of Money, or other personal Estate whatsoever, to be laid out in the Purchase of Lands, could be given by Will to any charitable Use whatsoever; and as that Society, by their own Rules and Orders, were obliged to employ all Sums of Money left to

¶ See the Proceedings of the Commons on this Bill, in the Introductory Minutes to *Chandler's* Hist. of this Session, P. xlv. to lii.

Anno 9. Geo. II. 1736. to them in the Purchase of Lands, he was afraid, that every Legacy left to them by Will, would be within the restraining Words of that Clause ; therefore he hoped some explanatory Words would be added in behalf of that Society , but this was likewise disagreed to.

Then the Lord *Hardwick* took notice, That the general Proviso for real Purchases offered by L. *Hardwick*. Words in the restraining Clause might, in some Cases, affect Purchases for a valuable Consideration, therefore he moved, that the following Proviso should be inserted in the Bill, *viz.*

‘ Provided always, that nothing herein before mentioned, relating to the Sealing and Delivery of any Deed or Deeds, twelve Kalendar Months at least before the Death of the Granter, or to the Transfer of any Stock, six Kalendar Months before the Death of the Granter, or Person making such Transfer, shall extend, or be construed to extend, to any Purchase of any Estate in Lands, Tenements, or Hereditaments, or any Transfer of any Stock, to be made really and *bona fide* for a full and valuable Consideration actually paid, at or before the making such Conveyance or Transfer, without Fraud or Collusion.’

Objected to. This was objected to by some Lords, as being unnecessary, and as it would afford a Handle for evading the Law ; for as Conveyances of Land-Estates might be, according to the Laws of this Kingdom, made by Persons on their Death-bed, it would be easy for any charitable Corporation or Body politic, to pay a full and valuable Consideration in ready Money, at or before the making of any such Death-bed Conveyance or Transfer, and at the same time to have a Will made, whereby the Sum so paid should be left them by way of Legacy, which would be a good Bequest ; and with that Legacy the Body politic might replace the Money which they had laid out upon the Purchase : But it being the general Opinion, that such a Conveyance and Bequest would be interpreted, as made by Fraud or Collusion, in order to evade the Law, and would not therefore be within the Proviso; and it being thought, that it would be a great Hardship upon all Bodies politic, to make void every Purchase or Transfer they could afterwards make or receive, in case the Granter, or Person who made the Transfer, should, by Accident, die within a Twelve-month after such Purchase, or within six Kalendar Months after such Transfer, even though really and *bona fide* made for a full and valuable Consideration, paid at or before the making of such Purchase, or Transfer, therefore it was agreed, that the Proviso offered should be inserted, and made Part of the Bill.

Justified.

Allow'd.

The

The Committee went afterwards through the Bill, and ordered their Amendment to be reported to the House; and accordingly, on the 11th, the Lord *Delaware*, their Chairman, reported the same to the House, when a Proposition was made to leave out, at the latter End of the first enacting Clause, these Words, *viz.* 'And unless the same be made to take Effect, in Possession for the charitable Use intended, immediately from the making thereof, and be without any Power of Revocation, Reservation, Trust, Condition, Limitation, Clause, or Agreement whatsoever, for the Benefit of the Donor or Granter, or of any Person claiming under him.' This occasioned a pretty long Debate, the Substance of which we shall give in the Argument upon the Bill in general; but the Question being at last put, Whether those Words should stand as Part of the Bill, it was resolved in the Affirmative; and the Amendment made by the Committee being agreed to, the Bill was ordered to be read a third time; which was accordingly done on the 13th, and the Bill passed without a Division; but the following temporal Lords entered their Protest, without giving any Reasons, *viz.*

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Words proposed  
to be left out by  
Lord *Delaware*.

Agreed to.

Protest thereon

*Abington, Beaufort, Oxford and Mortimer, Montjoy,  
Northampton, Litchfield, Stafford.*

The Arguments for the Bill were as follow, *viz.*

'My Lords, as the landed Interest of this Kingdom has always been our chief Support against foreign Enemies, and the great Bulwark for defending the Liberties of the People, against the Attempts of ambitious, encroaching Power, therefore it has always been reckoned a most necessary and a fundamental Maxim of our Constitution, not to allow any great Share of our Landed-Interest to be vested in Societies or Bodies politic, either sacred or profane: This Maxim appears to be co-eval with our Monarchy, and it is expressly established by the great Charter; for though Grants or Alienations of Lands to religious Houses only, be thereby prohibited, yet this Prohibition was founded upon the general Maxim, and religious Houses only were then mentioned, because Alienations to them was at that Time the only Transgression of this Maxim, which had been felt or complained of; but, in the very next Reign, in the seventh Year of the Reign of our great *Edward I.* this Defect was supplied; and by an express Statute, Alienations of Lands to any body politic whatsoever, were forbidden, under Pain of forfeiting the same: Nay, so sensible was that wise King of the Necessity

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cessity of this Maxim, that by the said Statute it is enacted, that no Body politic shall presume to appropriate to themselves any Lands or Tenements by any artful or evasive Method whatsoever; and of such Consequence was the Alienation of Lands in Mortmain, thought of old, that by one of our old Statutes, the Writ *ad quod Damnum*, for alienating Lands in Mortmain was ordered not to be granted, but upon Petition in full Parliament.

'Tis true, my Lords, our Ancestors had several Reasons for preventing the Alienation of Lands in Mortmain, which do not subsist at this Day. We are not now in any Danger of having our Lands swallowed up by an ambitious and avaritious Clergy, therefore we need not provide so strongly against our Lands passing into their Hands. The Defence of the Nation does not now so much depend upon our Militia or military Tenures, therefore the Safety of the Nation cannot be brought into so great Danger by a Multiplicity of such Grants: And as our Lands are all now held by Socage Tenure, neither his Majesty, nor any inferior Lord under him, can be so much injured by such a Grant: But there is another Reason which then subsisted, which now subsists, and which will always subsist; for if a great Part of the Land Estates of this Kingdom should ever come to be possessed by Corporations or Bodies politic, it might be of the most dangerous Consequence, both with respect to our Security against foreign Invasions, and with respect to the Preservation of our Rights and Privileges; because it is certain, that a Man who has in his own Person a particular Right to any Land Estate, which he may transmit to his Posterity, will be more daring and active in the Defence of that Right against a foreign Enemy, and more jealous of arbitrary Power by which that Right may be made precarious, than we can suppose any Man will be, who has a Right in the Lands only as a Lessee, or as a Member of a Corporation. This, my Lords, to me will always be a strong Reason for looking with a jealous Eye upon the growing Property of Corporations in the Lands of this Kingdom: This I take to be now one of the chief Reasons for not allowing any Bodies politic to purchase Lands without the King's Licence; and while our Laws continue as they stand at present, it is to be hoped that the Power of granting such Licences will be made use of with great Circumspection.

'As this Power has not yet been too far extended, as we are certain no wrong or unwise Use will be made of it during his present Majesty's Reign, therefore it is not yet absolutely

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' absolutely necessary to subject it to any Restraint: But, my Lords, there is an Evil lately grown up; an Evil not founded upon our ancient Constitution, but an Evil which took its Rise from our having departed, about two Centuries ago, from the common Law of this Kingdom. I mean the Liberty of granting or devising all Sorts of Land Estates by Will, and even upon Death-bed, not only to the Disappointment and Disinheritance of a Man's natural and lawful Heirs, but to the Prejudice of the common Good of this Kingdom, and in Contradiction to that ancient Maxim, which forbids the granting or alienating any Lands in Mortmain. Happy was it for this Nation, and for many great Families in this Kingdom, that no Man had such a Liberty in the Times of Popery and Superstition; for if Men could have then granted their Estates by Will, we should never have had such an Article as I have mentioned in *Magna Charta*, nor any Law against Mortmain, we should never have had a Reformation, nay, I doubt much if we should have had a Layman of a Land-Estate in *England*: But, luckily for us, we did not think of this Alteration of the common Law, till the Reformation was not only begun, but pretty far advanced, and those Monasteries and Religious Orders dissolved, who had been for Ages the Taxers of every dying Man's Will, and the Terror of all his Relations.

' We know, my Lords, that this Liberty of devising Land-Estates by Will, was first established by a Statute of the 32d of *Henry VIII.* which was explained and enforced by another Statute of the 34th and 35th of that King's Reign. However, by these two Statutes there were some Restraints laid, or rather left, upon granting or alienating Land-Estates by Will; for a Man was allowed to devise but one third Part of his Lands held by Knights Service, and there is an express Exception made with respect to Bodies politic or corporate; so that no Man could, by these Statutes, devise a Land-Estate to any Body politic or corporate, no not even with the King's Licence; but both these Restraints are now in a great measure removed; for all Tenures having been, by an Act of the 12th of King *Charles II.* turned into free and common Socage, a Man may now devise by Will all his fee-simple Lands if he pleases; and, by an Act of the 2d of Queen *Anne*, any Person may by Will devise his whole Land-Estate to the Corporation for the Bounty of Queen *Anne*, and they are enabled to take and enjoy the same, without any Licence or Writ *ad quod Damnum*. So that, with respect to this Corporation, every Man may upon his Death-bed, and

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even in his last Moments, devise his whole Land-Estate, not only to the Disappointment and Disinheritance of his natural and lawful Heirs, but to the Prejudice of what was of old thought to be the common Good of this Kingdom, and in contradiction to that ancient Maxim, which forbids the granting or alienating any Lands in Mortmain, without a Writ *ad quod Damnum*, which formerly could not be granted but upon a Petition in full Parliament.

So careful, my Lords, were our Ancestors in preventing the Lands of this Kingdom from coming into the Hands of Corporations or Bodies politic, ecclesiastical or lay, sole or aggregate, that Grants or Alienations of Lands to any Person or Persons in Trust, and for the Use of such Bodies, are declared void by a Statute of the 15th of Richard II. and by a Statute of the 23d of Henry VIII. all Grants and Alienations of Lands, to any Person or Persons, in Trust for any superstitious Use, are declared to be utterly void. But, of later Times, we have found out a Sort of Use called a charitable Use, for the Benefit of which a Man may alienate, grant, or devise his Lands; so that as the Law stands at present, though a Man cannot devise his Lands to any Corporation, except that for the Bounty of Queen Anne, yet he may now upon his Death-bed, and even in his last Moments devise his whole Land-Estate to any Person or Persons in Trust, for the Benefit of any charitable Use he pleases to appoint.

How we have come, my Lords, in these later Ages, to establish so unbounded a Liberty of devising Land-Estates by Will, and in Mortmain too, I do not know; but I am sure it is inconsistent with the ancient Maxims of this Kingdom, and with the Laws now subsisting in most Countries of Europe; for in Scotland no Man can, as yet, grant or devise any Land-Estate by Will; and in Wales, the Liberty of disposing of Estates by Will was so much confined, that they could not, by their last Will or Testament, freely dispose of their Goods and Chattels, till an Act was made in the 7th and 8th Years of the Reign of his late Majesty King William for that Purpose. Though this unbounded Liberty may be attended with some Conveniences, yet I am persuaded, it often subjects dying Persons to great Trouble and Solicitation, so that many of them have been, and many may be, obliged to purchase the Privilege of passing their last Moments in Ease and Quiet, at the Expence of their natural Heirs; which I must call an Injustice done to a Man's next Relations, if they have never been guilty of any thing to deserve being disappointed of that Expectation they are justly entitled to by

by the Laws of their Country ; and it is certain that more Anno 9. Geo. II.  
 Law-suits have sprung from this Fountain, than from any 1736.  
 other Regulation in the whole Body of the Laws of Eng-  
 land: This Injustice and Inconvenience are most empha-  
 tically, as well as prophetically, taken notice of by the  
 great Coke, in his Remarks upon the two Statutes of Hen-  
 ry VIII. I have mentioned ; where having taken notice,  
 that, by the common Law, no Lands or Tenements were  
 devisable by any last Will and Testament ; “ but now  
 (says he) “ since *Littleton* wrote, by the Statutes of 32 and  
 “ 34 *Henry VIII.* Lands and Tenements are generally de-  
 visable by the last Will in Writing, or the Testament of  
 “ the Tenant in Fee-simple, whereby the ancient common  
 “ Law is altered, whereupon many difficult Questions, and  
 “ most commonly Disinheritance of Heirs (*when the Devisors*  
 “ *are pinched by the Messengers of Death*, (he might have ad-  
 “ ded, *some other Sorts of Messengers*) do arise and hap-  
 “ pen.” From these Words we may judge, that That  
 great Man did not much approve of those two Statutes ;  
 and if he had been alive at this Day, I am convinced he  
 would have much less approved of the Statute made in the  
 second of Queen *Anne*, which I have already taken notice  
 of.

“ I am very far, my Lords, from disapproving of all  
 charitable Foundations, or of all Donations to charitable  
 Uses, either by Will or by Deed ; but I am convinced,  
 that our charitable Foundations may become too numerous,  
 and that some of those we have already established, may  
 become too rich and extensive, especially if the unlimited  
 Power of granting Licences, first vested in the Crown, by  
 the Statute of the 7th and 8th of the late King  
*William*, be not cautiously and moderately used. How-  
 ever, as no wrong Use has yet been made of that Power,  
 as there is no Appearance or Suspicion that a wrong Use  
 will be made of it, there is therefore no present Occasi-  
 on for laying any Restraint upon it, or for laying any Re-  
 straint upon those Donations which are made to Corpora-  
 tions or charitable Uses, by Men in full Health and Vi-  
 gour, and to take Place immediately upon the executing  
 of the Writings for that Purpose ; but as for those Dona-  
 tions which are made by Will, or by any Deed in the Na-  
 ture of a Will, and not to take Place till after the Death  
 of the Donor, I am of Opinion, that it is high Time for  
 us to re-assume the Maxims of our Ancestors, by restrain-  
 ing this testamentary Power with respect at least to Land-  
 Estates ; for, by the specious Pretence of Charity, the  
 Solicitations of those who are interested in charitable Foun-  
 dations,



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dations, and the Pride and Vanity of Donors, it is to me highly probable, that too great a Part of the Lands in this Kingdom may soon come to be in Mortmain, to the Prejudice of the Nation in general, and to the Ruin or unjust Disappointment of many a Man's poor Relations; for I cannot but think that a Man's Heirs at Law have some sort of natural Right to succeed after his Death, at least to his Land-Estate, unless they have forfeited that natural Right by some sort of unnatural Behaviour; and I cannot think it any Charity in a Man to give, even to the most charitable Use, that which he cannot in himself either possess or enjoy: The giving of any such Charity I shall always look on rather as an Act of Injustice towards the Heir at Law, than as an Act of Charity in the Donor; and as the giving of Land-Estates in such a Manner, is contrary to the ancient Maxims of the Kingdom, and may be of dangerous Consequence to the Public, I think it ought to be prevented. This is what is intended by the Bill now before us, and therefore I am most heartily for its being passed into a Law.'

The Answer was in Substance as follows, *viz.*

Answer.

' My Lords, that we have very ancient and very strong Laws against granting or alienating Lands in Mortmain, is what I shall not deny, nor have I, at present, any Occasion for so doing; but the chief Reasons for enacting those Laws were such as do not now, nor I hope ever will again subsist in this Nation. We know, that while Popery was established in this Country, all the Lands which the Priests regular or secular, could once get Possession of, became not only unalienable, but were in a manner torn off from the Commonwealth, and dismembered, as it were, from the Body of the Society; for they were rendered for ever free from public Taxes, or from being obliged to contribute any thing towards the Safety or Defence of the Kingdom; and as the Priests were more properly the Subjects of the Pope of *Rome*, than of the King of *England*, every Enlargement of their Possessions was an encreasing of the Power of a foreign Prince, in the very Bowels of the Kingdom. This was the chief and the strongest Reason for preventing the Alienation of any Lands to them; and there was another Reason of a private Nature, which was good against Alienations either to lay Corporations or ecclesiastical: I mean the Damage that might accrue by Alienations in Mortmain, to the Lords of whom those Lands were held; for the Lord was thereby for ever deprived of all

all those Profits and Services which were or might become due to him by the Nature of the Tenure ; but as neither of these Reasons now subsist, as no Lands alienated in Mortmain can now be freed from any of the public Taxes, and as no private Man can suffer by any such Alienation, we have not so great Cause to guard against Alienations in Mortmain.

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I shall grant, my Lords, that a Man who has a particular Right to a Land-Estate, which he may transmit to his Posterity, will probably be more concerned about the Preservation of that Right, than about preserving a Right which he has in Lands, only as a Member of a Corporation ; but every Man, who has a Concern in the Management of a Corporation, has some Property of his own, and the Preservation of that Property will make him as daring and active against a foreign Enemy, and as jealous of arbitrary Power, as his Nature and Constitution will admit, which is all that could be expected of him, were he the Proprietor of those Lands, in which he has only a Right as a Member of a Corporation ; so that if all the Lands in *England* were in the Possession of Corporations, I believe the People would be as ready to defend themselves against a foreign Enemy, and as tenacious of their Liberties and Privileges as they are at present : And as for our religious Corporations, besides the Concern which every Member must have for preserving the private Property he possesses, if he has any Regard for the Religion he professes, he must have a more than ordinary Concern for preserving the Nation against foreign Invasions, and for preserving our happy Constitution ; for by the Success of any foreign Invasion, the established Religion would certainly be destroyed, and it would be in a very precarious Situation, if it should ever come to depend upon the variable Will of an arbitrary Prince ; from whence I must conclude, that neither the Safety of the Nation, nor the Preservation of our Constitution, is much concerned in preventing the Alienation of Lands in Mortmain.

The only Reason I can suggest to myself for restraining the Alienation of Lands in Mortmain, is, lest any one particular Corporation should, by getting a great deal of Land in their Possession, become so powerful, as to be able to prescribe Laws to the whole Kingdom ; and I am sure there is not at present, a corporate Body in the Kingdom from which any such Danger is to be apprehended ; nor can such a Danger arise in any Time to come, while our present Laws against Alienations in Mortmain continue in Force ; for as no corporate Body can purchase or hold a greater

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greater Quantity of Land than they are now entitled to purchase, without a new Licence from the Crown, it will always be in the Power of the Crown to put a Stop to the purchasing of more Lands by any particular Corporation, whenever it shall be thought proper ; which we may assure ourselves the Crown will always do, long before any such corporate Body arrives at a dangerous Pitch of Riches and Power. With respect therefore to Alienations of Land in Mortmain, I can see no Reason for any new Law against them, or for laying any farther Restraint upon them.

Now, my Lords, with regard to the granting or devising Lands by Will, it is certain, that by several late Statutes a much greater Latitude is allowed in that Way, than was allowed by the common Law ; but we very well know the two chief Reasons why no such Devises, except with respect to Burgage Tenures, were allowed by the common Law. The first proceeded from the Nature of our ancient Tenures ; for as all our Lands were granted to Men and their Heirs, for certain Services to be performed to the Lord or Granter, it was thought necessary the Land should descend to the Heir, in order to enable him to perform those Services to his Lord ; so that the first Grant was looked on as a sort of Entail, for the Tenant in most Cases could not so much as alienate the Lands, even in his Life-time, without the Consent of the Lord ; the Nature of the Tenure therefore disabled him from disposing of his Fee without the Consent of his Lord, and if he had Time to obtain the Consent of his Lord, for granting his Fee to any other Person except his next Heir, it was as easy for him to do it by Deed as by Will ; for which Reason, while Things continued in that Situation, it was quite unnecessary to give any Man a Power to dispose of his Land-estate by Will, even though he should obtain his Lord's Consent for so doing. The other Reason proceeded from the Nature of the Popish Religion ; for in all Countries where that Religion is established, the Monks and Friars insidiously watch the last Moments of every dying Person, in order to terrify him into the giving great Legacies to their respective Fraternities ; and as some of the Tenets of that Religion are most artfully adapted for making Men very generous to the Church in their last Moments, the Lawgivers of this Country, as well as most other Countries, took Care that it should not be in the Power of those Priests to make themselves the Heirs as well as Executors to any dying Person.

But now, my Lords, both these Reasons are removed from this happy Kingdom ; and therefore I think the natural

' tural Right a Man has to dispose of his own, at what Time Anno 9. Geo. II.  
 ' and in what Manner he thinks most proper, ought to take 1736.  
 ' Place. It is certain, that a Power to dispose of a Man's  
 ' Estate at his Death, in such Manner as he may then  
 ' think best, is a great Incitement to Industry and Frugali-  
 ' ty, and consequently a great Encouragement to Trade in  
 ' every Country where it is established; and we may ob-  
 ' serve, that the Trade and Riches of this Kingdom has in-  
 ' creased more in the two Centuries since this natural Right  
 ' was restored, than it did in many Ages before. It is a  
 ' Power that is coveted by every Man, because when he has  
 ' any Estate, and a Power to dispose of that Estate by Will,  
 ' while he lives he may expect to meet with a proper Regard  
 ' and Attendance, both from his next Relations and all  
 ' those who happen to be near him; whereas, take this  
 ' Power from him, and he may very probably, in his last  
 ' Sickness or Extremity, be neglected by his next Heirs, and  
 ' despised by all his Servants. For this Reason, if you lay  
 ' any Restraint upon a Man's disposing of his Land-Estate  
 ' by Will, it will certainly prevent many from laying out  
 ' any Part of their Money upon Land, which will of course  
 ' sink its Value; for the Value of Lands, as well as of e-  
 ' very other Commodity, depends much upon the Number  
 ' of Buyers that happen to be in the Market. Even our  
 ' Ancestors, my Lord, notwithstanding the Dangers and the  
 ' Apprehensions they were under from the Insidiousness of  
 ' Popish Priests; yet so sensible were they that this Power  
 ' of disposing of our Estates by Will, was an Encourage-  
 ' ment to Trade, that, by the Customs of all our trading  
 ' Towns, and wherever the Tenure would admit of it, even  
 ' Lands were devisable by last Will: I mean those Lands  
 ' which were held by Burgage-Tenure; and though Sir Ed-  
 ' ward Coke does seem to throw some Reflexion upon mak-  
 ' ing other Lands devisable by Will, yet we know it to  
 ' be an Axiom in Law, as old as the common Law of  
 ' England, that *Interest reipublicæ suprema hominum testamen-*  
 ' *ta rata haberi*; which Axiom that great Lawyer has men-  
 ' tioned with a seeming Approbation. I shall grant, that  
 ' the Power of disposing of a Land-Estate by Will, may sub-  
 ' ject a Man upon his Death-bed to many Solicitations and  
 ' great Importunities; by which some Men may be, in a  
 ' Manner, forced to disappoint their natural Heirs, though  
 ' this last I believe seldom or ever happens, except where  
 ' such Heirs have been guilty of some Misbehaviour, or at  
 ' least of some Imprudence; but there is no Convenience  
 ' in this Life without some Inconveniences attending it: The  
 ' Possession of a great Estate, or of great Power, subjects a  
 ' Man

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Man to many Solicitations and much Trouble, yet no Man would give up a great Estate, in order to avoid such Solicitations, and very few would refuse to accept of a great Employment, because of the Trouble attending it. If this Argument were good, against leaving it in a Man's Power to dispose of his Land-Estate by Will, it would likewise be a good Argument against leaving it in his Power to dispose of his personal Estate by Testament, and therefore it might be said, we ought to return to the ancient *Welsh* Law, which was abolished by an Act of the late King *William*. In the same Manner, if the Multiplicity of Law-suits occasioned by Devises of Land, could be a good Argument against admitting of any such Devises, it would likewise be a good Argument against admitting of any such Devises, it would likewise be a good Argument against admitting of any Property; because it is certain, if there were no Property there could be no Law-suits. But the Conveniences attending Property, as well as the Conveniences attending the free Disposal of that Property, are much greater than the Inconveniences, and therefore both ought to be established and preserved in every well-regulated Society: Nay, in most, I believe in all Societies, a greater Latitude has been given, and more Favour shewn to the disposing of Estates by Will, than to the disposing of Estates by Deed: In this Country we know, that a more benign and favourable Interpretation is put upon the Words of a Will than on those of a Deed; and Persons under the Age of 21 are allowed to dispose of their Estates by Will, though they are not allowed to dispose of them by Deed; besides several other Privileges with respect to Wills, all which it would be too tedious to mention.

Having thus, my Lords, shewn that there is now no Danger to be apprehended from Alienations in Mortmain, or from a Liberty of devising Land-Estates by Will, I must next beg Leave to take Notice of that particular Sort of Devises which is to be restrained by the Bill under our Consideration; and here I hope your Lordships will excuse me, if I say a few Words in Favour of Charity. I am sure it does not stand in need of an Advocate with any Lord in this House; but as the Bill now before us will, in my Opinion, be a great Obstruction to all Charity for the future, I think myself obliged to say something in Favour of that amiable and useful Virtue. To assist the Widow and Fatherless, to relieve the Unfortunate and Distressed, to give Bread and Employment to the Indigent and Industrious, to nourish the tender Infant, and succour the helpless Old, are Actions in a private Man, which I

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am sure, will always meet with a general and just Applause ; Anno 9. Geo. II.  
 and if they are commendable in a private Man, surely 1736.  
 they are not so abominable when performed by the Public, as to deserve being prohibited by a public Law. On the contrary, we find that in all Countries, and in all Ages, a proper Care of the Poor, and proper Hospitals for that Purpose, has always been taken notice of as a certain Sign of a wise and good Magistracy, and of a well-regulated Commonwealth. I am sure I have often heard it told to the Praise and Honour of a neighbouring Republic, that a Native of their Country is seldom or ever seen begging in the Streets ; and but very lately in this House I heard great Encomiums thrown out upon a certain Set of People in this Kingdom, for that they took a particular Care of their Poor. Now, my Lords, if it be a good and laudable Thing in a State, if it be a good and laudable Thing in any private Society, to take a proper and effectual Care of their Poor, what can we think of a Law in any Kingdom for preventing its being ever in their Power, in a public Way, either to supply the Poor, or relieve the Distressed ? In no Country, in no Society can this be done, in a public Way, without a public Fund for that Purpose ; and the larger the Fund is, the more effectually and the more generally will the Poor be supplied, and the Distressed relieved : Therefore in every Country and in every Society, there ought to be some such public Fund ; and till that Fund be grown fully sufficient to answer the Purposes designed, surely no Methods ought to be taken to prevent its Encrease.

We have, it is true, my Lords, many and great Hospitals in this Kingdom, but they are far from being sufficient for the Purposes designed. To nourish and feed our Children, to educate them in the true Principles of Religion and Morality, and to breed them up to some Trade or Employment, by which they may provide for themselves, and be useful to Society, are Duties incumbent upon every Parent ; but when the Parents are dead, or rendered unable to perform those Duties to their Children, the Children then become the Children of the Commonwealth, and those Duties ought to be performed by the Public. Let us take a View of the several Parts of this great City, or of any Part of the Kingdom, and we may see that the Hospitals we have for poor Children are far from being sufficient for all the poor Children who have no Parents, or whose Parents are unable to provide for them. To support a decayed and decrepid Parent, who through Age or Infirmary is not able to provide for himself, is a Duty incumbent

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bent upon his Children, but when he has no Children, or such as are unable to discharge that Duty, it then becomes a Duty upon the Public; and though we have several Hospitals for the Old and Infirm, I am sure they are far from being sufficient for the Purpose. In the same Manner we shall find that our Hospitals for Sick and Wounded, and our Hospitals for Mad-men and Ideots, are far from being sufficient for providing for all such Objects of Charity: And when we find there is such a Deficiency in every Branch of public Charity, I must think it both uncharitable and unwise to make a Regulation which will very much prevent the Increase of every one of our public charitable Funds.

Among our many other charitable Foundations, I hope it will be granted, that the public Charity established by her late Majesty Queen Anne, for Augmenting the Maintenance of Ministers of the established Church, not sufficiently provided for, and from thence called *The Corporation for Queen Anne's Bounty*, is a necessary and useful Foundation. The distressed and narrow Circumstances of many pious and worthy Clergymen of the Church of England, is an Evil and a Scandal that has been often taken Notice of, and heavily complained of; therefore, in order to provide a Cure for that Evil, and to remove that Scandal from the Nation, her most gracious Majesty, by Authority of an Act of Parliament, did establish a Corporation, upon whom she settled the First-fruits of all Benefices spiritual, and by the same Act of Parliament any Person is enabled to grant to the said Corporation any real or personal Estate; all which they are to apply to the Augmentation of the Maintenance of Ministers of the Church of England; having no settled competent Provision, to be applied according to the Will of the Benefactor, or in such Manner, and according to such Rules, as should be appointed by their Charter: Accordingly, divers Rules and Orders were settled by her said late Majesty, by some of which Rules and Orders, the Augmentations to be made were directed to be by way of Purchase, and not by way of Pension; and the stated Sum to be allowed for the Augmentation of each Cure, was limited to 200*l.* and the Corporation was empowered to give the said Sum only to Cures not exceeding 35*l. per Annum*, (which was by Authority of his late Majesty King George I. enlarged to 50*l. per Annum* but this Sum of 200*l.* each, is first to be applied to those Cures not exceeding 50*l. per Annum*; where any Person will give the same, or greater Sum or Value in Lands or Tythes to the same Cure. Now, my Lords, let us consider the proper Fund

Fund of this Charity, and the Uses for which it is intended, in order to see whether the Fund is any way sufficient for answering the Design. The only proper Fund they have, is the Revenue of the First-Fruits and Tenths, which was granted them by the late Queen *Anne*, and which does not amount to 14,000 *l.* a Year; the Uses to which this Fund is appropriated, are the Augmentation of all the Livings in *England* under 50 *l.* a Year; and as it is computed there are above 5500 such Livings in *England*, we must conclude that it will be above 300 Years before they can make any proper Provision for all those of the Clergy, who have not a settled competent Provision; and I am sure every one of your Lordships must think, that it would be a great Scandal upon this rich and opulent Nation, to leave many of their poor Clergy almost in a starving Condition for such a great Number of Years: This, the Parliament which established the Corporation, seemed to be fully sensible of, and therefore they enabled them to take Donations in Land as well as Money; and if we are now of the same Sentiments, we must be of Opinion, that this public charitable Fund, like all the rest, is far from being sufficient for the good Purpose intended.

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It being thus apparent, my Lords, that every Society ought to support the Poor, and relieve the distressed Members of their Society, and it being impossible to do this without proper and sufficient Funds for that Purpose, therefore it is certain, that in every well-regulated Society, they will endeavour, as much and as soon as they can, to establish such Funds: And it being likewise apparent, that no one of our public charitable Funds is sufficient for the Purpose for which it was designed, it must be inconsistent with good Policy at least, to make any Regulation, which will very much retard, if not entirely prevent the Increase of either of them. That the Bill now before us will very much retard the Increase of any one of our charitable Funds, is evident; for it puts it out of the Power of any Man to give Charity at that very Time, when all Men are most apt to give Charity, which is when they find themselves drawing near to the Gates of Death, and begin to despise those Riches and Estates, which they were so fond of, while in Health and Vigour, that no Consideration could prevail with them to give away the most inconsiderable Part: This of itself would, in my Opinion, be a very great Bar to the leaving of any Estate in Land to a charitable Use; but to make this Prohibition extend to charitable Donations granted either by Will or Deed, by Persons in full Vigour and Health, and to make them also void, unless made to

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‘ take Effect in Possession for the charitable Use intended  
‘ immediately from the making thereof; and also, unless  
‘ they be made without any Power of Revocation, Reserva-  
‘ tion, Trust, Condition, Limitation, Clause or Agreement  
‘ whatsoever, for the Benefit of the Donor or Granter, or of  
‘ any Person or Persons claiming under him, will certainly  
‘ be an absolute Bar to the leaving of any Land-Estate to a  
‘ charitable Use; for no Man will in his Life-time grant  
‘ away his Estate in such a Manner, even to the most  
‘ charitable Use he can think of; because, in Case he did so,  
‘ he might come to want Charity himself before he died,  
‘ which is a Danger no Man will expose himself to; and  
‘ therefore, unless these Words be left out, I shall look upon  
‘ this Bill, not as a Bill to prevent the granting of Land-  
‘ Estates to charitable Uses by Will, but as a Bill to prevent  
‘ the granting of Land-Estates by Will or Deed, or by any  
‘ Manner of Way, to any charitable Use whatsoever; and  
‘ I cannot think our charitable Foundations have as yet Pos-  
‘ session of such a Quantity of Land, as to afford the least  
‘ Shadow of Reason for passing such a Bill.

‘ But farther, my Lords, with respect to the Corporation  
‘ for the Bounty of Queen *Anne*, this Bill, as it stands at pre-  
‘ sent, will not only be an absolute Bar to the granting of  
‘ any Land-Estate to them, but I am afraid it will be an  
‘ absolute Bar to the leaving of any Legacy in Money, or  
‘ other personal Estate to them; for as no Sum of Money, or  
‘ other personal Estate, to be laid out or disposed of in the  
‘ purchase of Lands, is to be hereafter given to any Body  
‘ corporate, except in the Terms prescribed by this Bill;  
‘ and as by the Rules of that Society all Sums of Money  
‘ given to them, are to be vested in the Purchase of Lands,  
‘ I am afraid all Legacies left to them will be made void, as  
‘ Sums of Money given to be laid out in the Purchase of  
‘ Lands; nay, I am afraid, if any Gentleman should give  
‘ them 200 *l.* in Money for augmenting any small Benefice  
‘ in his Neighbourhood, and should die within 12 Months  
‘ after, that the Corporation would be obliged to return the  
‘ 200 *l.* to the Gentleman’s Executors; therefore I hope,  
‘ if this Bill passes into a Law, some Words will be inserted,  
‘ or some Clause added, for explaining this Point in favour of  
‘ the Corporation; for I hope we have not so far changed  
‘ our Sentiments with regard to this Corporation, as to make  
‘ it the least favoured, instead of being the most favoured  
‘ charitable Foundation in *England*.

‘ Since the charitable Funds we have in this Country, are  
‘ not sufficient for the good Purposes intended, or for an-  
‘ swering those Ends which ought to be answered in  
‘ every well-regulated Society, I have said, my Lords, that  
‘ it

it would be inconsistent with good Polity, to make any Regulation, by which the Increase of those Funds might be retarded, or perhaps intirely prevented; and this, I think, I have shewn will be the certain Effect of the Bill now before us. To this let me add, that with regard to good Polity it signifies nothing, whether the Grant or Donation, be a Charity in the Donor, or not; therefore we have at present no Occasion to enquire, whether it be a Charity or not in a Man, to give to a charitable Use, that which he can no longer possess or enjoy. I shall grant, that a Death-bed Charity, or a Donation to take Place after a Man's Death, has not the same Merit with that Charity, which a Man gives away in his own Life-time; but even the former is not without its Merit; for if it proceeds from a Regard for the public Good, and for the Honour of one's Country, or from a Fellow-feeling in the Misfortunes of Mankind, it is certainly highly commendable; and even, supposing it proceeds from the Pride and Vanity of the Donor, which we ought not in Charity to suppose, yet as long as our charitable Foundations stand in need of any Increase, it ought for the Sake of good Polity to be encouraged, in all Cases where no real Injustice is thereby done to any particular Member of the Society.

This, my Lords, naturally leads me to consider the Right which a Man's next Heirs or next Relations have, to the Estate he has acquired by his Industry and Frugality; with Regard to which, I shall grant, that a Man is obliged to support his Relations under Misfortunes, and even at his Death to leave them wherewithal to support themselves, in order to prevent their becoming a Burden upon the public; but that he is obliged by any Law in the World, to leave a great and opulent Fortune to every one, or to any one of them, is what I believe no Man will pretend. If a Man dies without disposing of his Estate, the Law, it is true, gives it to his next Relations, according to those Rules, which have been established in each respective Country; but this does not proceed from any Right which the Relations had to that Estate before the Death of the Owner, but from a Presumption, that it was his Desire to have his Estate so disposed of; for it is a Quality inseparable from Property, that the Owner may dispose of it as he pleases; and therefore, if a Man's Relations, or any one of them, forms an Expectation of his Estate independent of, or contrary to his Will and Intention, it is an unjust Expectation, an Expectation, in which he may disappoint them without being guilty of the least Injustice. They have no natural Right to any greater Share of his Fortune, than

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‘ than he pleases to bequeath them, and the giving them any legal Right, would be the Cause of a great deal of unnatural Behaviour.

‘ To conclude, my Lords, if a Death-bed Donation, or a Donation to take Place after a Man’s Death, proceeds from a sincere Regard to the public Good, or a true Sense of the Misfortunes and Distresses of our Fellow-Creatures, it is a real Charity, and I must think it both uncharitable and unchristian, to prevent its being granted: And if it proceeds from the Pride and Vanity of the Donor, which I hope it seldom does, yet, while our charitable Foundations stand in need of any Increase, while there is any Object of Charity in the Kingdom unprovided for, I must think it inconsistent with good Polity, and derogatory to the Honour of the Nation, to prevent its being granted: For which reason, I must be of Opinion, that, as a good Christian, and as a good Subject, I am obliged to give my Negative to this Bill.

The Reply was to this Effect, *viz.*

Reply.

‘ My Lords, that our Ancestors had many and strong Reasons for preventing the Alienation of Lands in Mortmain, is apparent from the great Care that was taken from Time to Time, to prevent all the Artifices contrived for evading the established Laws of the Kingdom; for no sooner was any new Artifice discovered, than a new Law made for preventing it in Time to come. What particular Reasons they had, besides those we now have, are not of any signifiçancy in the present Question; but if it were necessary, I could shew, that the particular Reasons mentioned could never have been sufficient for such a general Prohibition, as we find established by our Ancestors, if they had not likewise had under their Consideration those general Reasons which now are, and always have been good Reasons against admitting of such Alienations: I mean those Reasons, which are founded upon the Security, the Aggrandizement, and the Happiness of the Commonwealth in general.

‘ With respect to the Security of the Kingdom, it is certain that this Nation, as well as every other Nation, has always owed its Security against foreign Invasions, chiefly to the landed Men of the Country, who must necessarily be more zealous in the Defence of their Country, than Persons possessed of any other sort of Property; because the Lands are always seized upon by the Conqueror; whereas, with regard to those who are possessed of a personal Estate only,

\* only, if they escape the first Plunder, they are generally Anno 9. Geo. II.  
 \* left in Possession of what formerly belonged to them. Now 1736.

\* I shall grant, that the Managers of Corporations must be  
 \* possessed of some personal Estate of their own, but it is  
 \* not necessary to suppose, nor can it be supposed, that they  
 \* are all possessed of Land-Estates; therefore it is not to be  
 \* presumed, they will be so zealous in the Defence of their  
 \* Country, for the sake of preserving the Lands belonging to  
 \* the Corporation, as they would be, did those Lands belong  
 \* properly to themselves; and a few indolent or luke-  
 \* warm Managers might prevent the Corporation's giving any  
 \* proper Assistance to their Country, even in a Time of the  
 \* utmost Distress. In the Case therefore of a foreign In-  
 \* vasion, it would be of the most dangerous Consequence, to  
 \* have a great Part of our Lands in the Possession of Cor-  
 \* porations; and in the Case of any Attempt upon our Li-  
 \* berties, the Consequence would be fully as dangerous; for  
 \* the History of the great Charter, upon which the Laws of  
 \* Mortmain are founded, and many other remarkable Events  
 \* shew, that our noble and ancient Families have been the  
 \* chief Supporters of our Liberties; for this obvious Reason,  
 \* because they are always the first Sacrifices to Tyranny;  
 \* therefore it would be most ridiculous to admit of an un-  
 \* limited Alienation of Lands in Mortmain, by which it  
 \* might at last become impossible for us to have a noble or  
 \* ancient Family in the Kingdom: Besides we know by Ex-  
 \* perience, that Corporations of all Kinds are more easily  
 \* managed and influenced by a Government, than any equal  
 \* Number of individuals; and they have upon all Occasions,  
 \* shewed themselves less jealous of those steps which seemed  
 \* to tend towards the Establishment of Arbitrary Power.

\* Another great Danger which is most justly to be appre-  
 \* hended from too great a Liberty of granting or alienating  
 \* Lands in Mortmain, is, lest any one particular Society  
 \* should thereby become so powerful, as to be able to pre-  
 \* scribe Laws to our Government, and by that Means over-  
 \* turn our Constitution. This is a Danger which seems to  
 \* be fully acknowledged by the noble Lords, who have spoke  
 \* on the other Side of the Question; but say they, this  
 \* Danger is no way to be apprehended, while our present  
 \* Laws against Alienations in Mortmain continue in force;  
 \* because no new Purchases can be made, without a  
 \* Licence from the Crown. My Lords, it is from that very  
 \* Cause that I apprehend a Danger may arise, and if not pre-  
 \* vented, may become unavoidable before it be discovered.  
 \* The Crown, it is true, had before the Revolution assum-  
 \* ed a Power of granting Licences; but the Crown had never  
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an established unlimited Power of granting Licences to purchase or hold in Mortmain, till the Act of the 7th and 8th of King *William* already mentioned in this Debate. While we have the Happiness to be under such a wise King as his present Majesty, we can have nothing to fear ; because a King who looks into his own Affairs, will never allow any Society to become too powerful for himself ; but we cannot hope to have always the same good Luck ; and if a King should give himself up to the sole Management of any one Favourite, that Favourite may get himself established at the Head of a powerful corporate Body or Society, and may then find it proper for his own particular Interest, to make that Society as powerful as he can, by granting as extensive a Licence, or as many Licences as they can desire : If such an Administration should continue for any great Number of Years, the Society might become so powerful, that it would become very dangerous for any future Minister, or even for any future King, to refuse them as many more ; and we know how ready all Men, but especially Ministers, are, to comply with any present Exigency, rather than run themselves into immediate Danger, by encountering a growing Evil.

In this Country, as well as in every other Country, we may look upon all the Clergymen of the established Church, to be Members of one and the same Society or corporate Body ; for though they are not united by any one royal Charter, yet there is a sort of Unity established among them by the Laws of the Kingdom, and founded upon an Authority superior to that of any earthly King ; from whence we may suppose, that they will always unite their Force for encreasing the Power of the Society ; and we know by Experience how generally, and how closely they have joined against Measures, which their Leaders thought might tend to the Diminution of their Power, or towards preventing its Increase. Now, my Lords, suppose we should in some future Age have a weak Prince upon the Throne, a Prince wholly guided by one Favourite, and that Favourite a Prelate, who had got the Management of the Clergy almost entirely under his Direction ; can we suppose that such a King, and such a Minister, would ever refuse to grant a Licence to any ecclesiastical Corporation either single or aggregate ? and the certain Consequence would, in my Opinion, be, that if such an Administration should continue for any Number of Years, the temporal Power of the Church, by means of their Lands and other Possessions, would become as much superior to the State, as ever it was in any of the Ages of Popery and Superstition.

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In such a Case, our Constitution would be entirely overturned; and though the present Clergymen of our established Church have not generally the least Tincture of a persecuting Spirit; yet if their Successors should get into their Hands the whole Power of making Laws, as well as of putting them in Execution, it is much to be feared, that a Persecution, or perhaps an Inquisition, would be set up under the Banners of the Church of *England*, as bloody and cruel as any that was ever set up under the Banners of the Church of *Rome*.

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Thus, my Lords, I have shewn, that with respect to our established Church, it may, by means of that unlimited Power of granting Licences to purchase in Mortmain, now vested in the Crown, become so powerful, as to be able to prescribe Laws to the whole Kingdom. But when I talk of the established Church, why should I mention the granting of them any Licence from the Crown? They have already, I may say, an unlimited Licence by Act of Parliament: So forgetful have we of late been of the Maxims of our Ancestors, that we have granted them such Licences by Law, as would enable them to purchase, in Time, the whole Lands of the Kingdom, without so much as any one Licence from the Crown. By an Act of the 17th of King *Charles II.* every Parson and Vicar in *England*, whose settled Maintenance does not amount to 100 *l.* a Year clear, has got a Liberty to purchase Lands, to him and his Successors, without any Licence in Mortmain, and what is most extraordinary, without Stint or Control. Which Act of Parliament by itself alone, with a little Management, would enable our Church to purchase all the Lands in *England*, without being obliged so much as to ask a Licence from the Crown; for we have been told in this Debate, that there are in *England* above 5500 Livings under 50 *l.* a Year, and computing there are 2000 only above 50 and below 100 *l.* a Year, we must from thence reckon there are in *England* 7500 ecclesiastical sole Corporations, who have by that Act a Liberty to purchase as great a Quantity of Land as they please, without any Licence in Mortmain.

Then, my Lords, by a still more extraordinary Act in the late Queen's Time, all the Clergymen of the Church of *England* are in some Manner united into one Corporation, and that Corporation is not only enabled to purchase Lands in Mortmain, without any Licence from the Crown, but is provided with a very large and a perpetual yearly Fund for that Purpose, for the First-Fruits and Tenths, settled upon them by that Act, bring in already at least 14,000 *l.*

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*per Annum*, and will, in a very short Time, bring in 20,000 *l. per Annum*: But farther, my Lords, lest that happy Event of their being made the Masters, and Lawgivers of their Country, should be too long postponed, every Man in *England*, nay, every Woman in *England*, is by that Act enabled to give them by Deed, and even by Will, the whole Estate real and personal, which he or she may die possessed of, and such Estates the Corporation are rendered by that Act capable to hold and enjoy without any Licence *ad quod damnum*, and notwithstanding the Statute of Mortmain. And I must particularly take Notice, that neither by that Act, nor by any other Act, is there a Period put to the Continuance of that Corporation: It is made a perpetual Corporation, with Leave to take Lands by Will, and purchase Lands without Stint, Limitation, or Licence, and it is provided with a large annual and perpetual Fund for that Purpose; so that, by the very Nature of Things, as all the Lands they can get hold of, become unalienable, our Church must necessarily at last, by Means of that Corporation, become Mistress of all the Land-Estates in *England*. If we consider the many and powerful Solicitors they have about dying Persons, and the present prevailing Madness of perpetuating one's Memory, by leaving a large Estate to some Body Politic, we must conclude, that unless a Stop be put to it, this Event is not at such a Distance as some may imagine; and I must say, the Corporation has established a most excellent Rule for this Purpose: They have resolved not to purchase any Thing but Land, they have resolved not to content themselves with any Pension or Annuity issuing out of Lands, but to be absolute Masters of the Lands themselves.

What I have said, my Lords, upon this Subject, is not with a Design to throw any Reflexion upon the established Church, or to diminish the Credit of our established Clergy. No, my Lords, I hope their Credit among the People of this Kingdom will always be as considerable as it ought; but I hope that Credit will always depend, not upon their Possessions, but upon the Purity of their Doctrines, and the Sanctity of their Lives. As I am myself an unworthy Member of the Church of *England*, as by Law established, I must love and reverence that Establishment; and for this very Reason, I shall always be against vesting any great Possessions in the Church. I have as great a Desire as any Man, to see our Clergy all comfortably and honourably provided for; but that Provision ought not to be made to arise from Possessions of their own, but from the annual

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Contributions of the People; for if ever the Clergy of our Anno 9. Geo. II.  
 established Church, should come to be possessed of many 1736.  
 and large Estates in Land, as the Popish Clergy of this  
 Kingdom formerly were, it will be a Temptation to some  
 ambitious and enterprising Prince, like our *Henry VIII.* to  
 overturn our established Church, in order to get hold of  
 their opulent Possessions. This very Thing was, I believe,  
 one of the chief Causes of the Reformation; for tho' most  
 of the common People had embraced the reformed Religion  
 from Principle and a sort of Enthusiasm, yet I am per-  
 suaded, that many of our great Men embraced the first  
 Doctrines of the Reformation, and joined with their Prince  
 in getting them established, not from Principle, but in  
 order to share with him in the Spoils of the then establish-  
 ed Church; and as like Causes always produce like Effects,  
 therefore as a sincere Member of the present established  
 Church, and from a thorough and true Regard to her  
 Doctrines, I shall always be for limiting and restraining her  
 Possessions, especially in Land, or any other sort of Revenue  
 but what depends upon the yearly Contributions raised by  
 Law upon the People.

Now, my Lords, with respect to the Aggrandizement  
 and Happiness of the Commonwealth in general: Ever  
 since we began to understand any thing of Trade and Com-  
 merce, it has been an established Maxim in this Kingdom,  
 not to allow our Lands to be settled unalienably even upon  
 private Families, and much less upon Bodies Politic; and  
 the Reason of this Maxim is very plain; because after a  
 Man by his Industry or Trade has saved as much as puts  
 him above the Fears of Want, an Ambition of establishing  
 his Family in the Kingdom, then begins to take Place;  
 this raises in him a Desire of purchasing some Land-Estate;  
 and this Desire promotes his Industry, and makes him con-  
 tinue his Trade: Whereas, if he could have no Hopes of  
 getting any Land-Estate to purchase, which might be the  
 Case, if the greatest Part of our Lands were settled in  
 Mortmain, he would either give up his Trade, or he would  
 go and establish himself and his Family in some foreign  
 Country, where he could purchase a Land-Estate. From  
 hence it is evident, that the allowing of any great Part of  
 our Lands to be settled in Mortmain, would be a great Dis-  
 couragement to our Trade, upon which the Grandeur and  
 Happiness of the Nation very much depends, and might  
 rob us of a great many of our richest Merchants. To this  
 I must add, that nothing has contributed more to the Im-  
 provement of our Lands, and the beautifying our Country,  
 than the great Number of Gentlemen's Seats we have in  
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every Part of the Kingdom ; whereas, if our Lands should all become the Property of Corporations, our fine Country Seats would all go to Ruin, and a great Stop would be put to all farther Improvement ; for no Man will be at so great an Expence or Trouble in improving a Leasehold Estate, as he would be, were he the Tenant in Fee.

I have already shewed, my Lords, how much we are exposed by our Laws, as they stand at present; to the Danger of having our Lands engrossed by Ecclesiastic Corporations, and of what fatal Consequence that might be to the Security and Preservation of our Constitution. With regard to our Lay Corporations, as they are not as yet united into one Body, it cannot be said, that our Constitution or Government can be in any Danger, from any Possessions they may acquire; but the Trade and Commerce of the Nation, the Improvement of our Lands, and the Beauty of the Country, will be as much injured by their Acquisitions, if they become considerable, as by Acquisitions made by the Church; and it is certain, we have of late Years widely departed from the Maxims of our Ancestors, with respect to Lay Corporations as well as Ecclesiastic. The first Breach was made by an Act of the 39th of Queen *Elizabeth*, by which any Person was enabled, within 20 Years then next ensuing, by Deed enrolled in Chancery, to erect and found an Hospital or House of Correction: And every Hospital so to be founded, was by that Act incorporated, and empowered to purchase Lands not exceeding 200 *l. per Annum* without Licence, and notwithstanding the Statutes of Mortmain. This extraordinary Step was at that Time something necessary, because our Poor had then no Sort of Provision made for them by Law, they had been before that Time taken care of by our Monasteries and religious Houses, and were left entirely destitute of any public Support, by the Dissolution of those Monasteries and religious Houses; but by an Act of the 43d of the same Queen's Reign, the present Method of obliging every Parish, Hundred, or County, to provide for their own Poor, was established; which Method, if properly regulated, and rightly pursued, would, in my Opinion, make all public Hospitals useless. But it seems the contrary Opinion prevailed soon after the Revolution; for in the 7th and 8th of King *William*, that Act was passed, by which the Crown got an unlimited Power of granting Licences to alien and take in Mortmain; and the Act was entitled, *An Act for the Encouragement of charitable Gifts and Dispositions*, which was, it seems, the Pretence made

made use of for granting that Power to the Crown, and therefore it was, I presume, a favourite Pretence at that Time. This has made it very easy to set up any new Corporation, and has made it easy for every old Corporation to extend their Dominions almost as far as they please; so that I think we are in Danger of having the greatest Part of our Lands swallowed up by some Corporation or other, unless a Stop be put to it in Time; and if ever this should come to be our Case, we may then bid adieu to our Trade, and to all future Improvements.

But, my Lords, the Danger of having our Lands swallowed up by Corporations, Ecclesiastic or Lay, is not the only Danger we are at present exposed to; there is a new Sort of Mortmain lately set up, a new Gulph opened, under the Name of charitable Uses, which may be said to be without either Bottom or Bounds, and which will certainly swallow up that Remnant which may be left by the others; for by the Laws, as they stand at present, any Person in the Kingdom may, in his last Moments, devise his whole Land-Estate in Trust for charitable Uses; the Representative of the most ancient Family in *England*, if he be Tenant in Fee-simple, may disappoint his natural Heirs, and utterly ruin his Family by such a Devise, and that at a Time when very few Men can properly be said to be in their right Senses. If we consider that all such Charities are generally left, or come to be under the Management of some one Clergyman or another, we must from thence conclude, that we have now the same Reason to prevent such Devises as our Ancestors had; for what was the Reason of the Popish Clergy's watching so insidiously the last Moments of every dying Person? Was it not in order to get some Legacy for encreasing the Riches and Power of the Church in general, they having no private Families of their own to solicit for? And if the Riches and Power of our present Church be encreased by Donations, to what are called pious and charitable Uses, are we not to suppose that our Clergymen will soon begin to watch the last Moments of every dying Person, as insidiously as ever the others did, if we lay a Foundation for, or leave any Hopes of Success from such Watchfulness? The Clergy of our Church as now established by Law, are but Men, and Men are, in all Ages and in all Countries, generally speaking, endued with the same Passions, and the same Affections: It is Education and Opportunity only, that makes the Difference. The Opportunity is already given, and their Education will soon begin to be turned towards making the best of that Opportunity, if not speedily prevented. Arguments

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guments for such Donations will never be wanting, when Men are pinched by the Messengers of Death : Nay, many weak Men may, at such a Time be made to believe, that such a Donation will be an Atonement for a whole Life spent in Wickedness and Oppression.

Having thus laid before your Lordships the Dangers to which we are now exposed, by having departed from the Maxims of our Ancestors in relation to Mortmain, give me Leave to examine a little the Reasons which have lately prevailed for exposing ourselves to such Dangers. The Pretence is Piety and Charity ; but if it should come out, that there is neither Piety nor Charity in erecting such magnificent and rich Hospitals, I hope we will then begin to think, there is not the least Shadow of Reason for our leaving the Nation exposed to any Danger upon that Account. True Piety and real Charity are Virtues highly commendable, they are Virtues which I shall always esteem and encourage as much as lies in my Power. To assist the Widow and Fatherless, to nourish the tender Infant, and succour the helpless Old ; in short, to relieve the Poor and Distressed, who cannot provide for themselves, is a Duty incumbent upon every Society, as well as upon every private Man : But, my Lords, this Duty is to be discharged with great Caution, and with great Circumspection ; for if we mistake the Object of our Charity, if by giving what we call Charity we encourage Laziness, Idleness, and Extravagance, in the Persons to whom we give it, or in others, the Action is so far from being pious, charitable, or commendable, that it becomes impious, ridiculous, and injurious to our native Country. This, my Lords, is the Footing upon which we ought to place the present Debate ; the Dispute is not about providing for our Poor, but about the Manner in which they ought to be provided for. If I thought, my Lords, that any real Object of Charity in the Kingdom would, by this Bill, be disappointed of that Relief which the Nation ought to give, or he had any Title to expect, I should be for rejecting it with the utmost Indignation ; but the Scope of the Bill I take to be, to prevent Men from ruining their Families for the sake of establishing such charitable Funds as I am sure never will, nor ever can, be properly applied.

I shall readily admit, my Lords, that the Poor cannot be relieved in a public Way, without a public Fund for that Purpose ; but I am surprised to hear it said, that we have not in this Nation a public Fund sufficient for the Relief of all the Objects of Charity that are now, or ever

' can be in this Kingdom, unless our Lands should be all Anno 9. Geo. II.  
 ' swallowed up by Corporations and charitable Uses. Do 1736.  
 ' not we know, that by the Laws relating to the Poor, every  
 ' Parish is obliged to support and relieve their own Poor ;  
 ' and if any one Parish should, by some extraordinary Mis-  
 ' fortune, be disabled from doing so, the whole Hundred  
 ' must be taxed for that Purpose? Nay, if the Hundred  
 ' should be unable, the whole County must be taxed : And  
 ' thank God, there is not as yet a County in *England* but  
 ' what is sufficiently capable of maintaining their own Poor :  
 ' but even if such a Case should happen, we have a Method  
 ' provided for supplying the Deficiency, which is by the  
 ' granting of charitable Briefs ; by which Method we may  
 ' bring the whole Nation in Aid. It is not therefore for  
 ' want of a public Fund sufficient for all charitable Purposes  
 ' that Hospitals have been set up : The setting up them must  
 ' have proceeded from some other Cause ; but let the Cause  
 ' be what it will, it is certain they have increased prodigi-  
 ' ously within this last Century ; so that we have now in  
 ' this Nation two Methods of providing for our Poor, one  
 ' by putting them into those Hospitals founded for that Pur-  
 ' pose, and the other by obliging their respective Parishes to  
 ' take Care of them ; and which of these Methods is the  
 ' best, will appear by considering the State and Nature of  
 ' Mankind.

' It is certainly the Interest of every Society to encourage  
 ' Industry and Frugality among their People, especially  
 ' those of the poorer Sort, and as most Men are compelled  
 ' to be industrious and frugal by Necessities, it is not there-  
 ' fore prudent in any State to prevent, in any great Mea-  
 ' sure, all those Necessities. The Support of Nature is what  
 ' forces every poor Man to labour, and he may perhaps  
 ' supply this Necessity by working hard two or three Days  
 ' in a Week ; so that if he were under no other Necessity,  
 ' he would probably sit idle all the rest of the Week ; but  
 ' then every prudent Man considers, that while he is in Vi-  
 ' gour and Health, he ought to provide for old Age and  
 ' Sickness ; and every Man, who has any natural Affection  
 ' or Compassion, will provide for his Children, and even  
 ' for his Relations and Friends in Distress, in the best Man-  
 ' ner he can : The making of a Provision for old Age, for  
 ' Sickness, for the Education of Children, and for assist-  
 ' ing Friends in Distress, are therefore the Necessities that  
 ' compel most of our Poor to labour hard all the Days of  
 ' the Week, and to save what they have earned by their  
 ' Labour ; but if you give a Man any Hopes of being well  
 ' provided for in his old Age or Sickness, or of having his

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Children educated and his Friends relieved, in as handsome a Manner as he can desire, without putting him to any Expence, I believe there is not one of a hundred will either labour so hard, or live so frugally as he would otherwise have done: For this Reason, great Care ought to be taken not to give any Men Hopes of being supported in old Age or Sickness, or of having their Children educated for them, or their Friends relieved, unless they can shew, that by some Misfortune they were rendered incapable of making any Provision for those Necessities by their own Industry and Frugality; for wherever a Man neglects to do so, when it is in his Power, he never can be a real Object of Charity, he deserves to suffer, and the public Good requires he should, in order to be an Example and a Terror to others.

From hence, my Lords, we must conclude, that no Person can be deemed a proper Object of Charity, till after his Circumstances and former Behaviour have been strictly enquired into; and whether the Parish-Officers within their respective Parishes, or the Governors and Officers of an Hospital, are most capable of doing this, is very easy to determine. The Parish-Officers are generally themselves all acquainted with the Person that makes the Application, and can from their own Knowledge judge if he be a proper Object; they contribute out of their own Pockets, yearly, their Share of that Charity which is given, and are answerable to the Parish for what they do, therefore they certainly will always be extremely cautious of giving a Share of the Parish-Charity to an unworthy Object, or to one who does not stand in need of it: On the other Hand, the Governors of Hospitals are never all acquainted with the Person that applies, seldom any of them are; and as they pay nothing out of their own Pockets to the Charity they have the Management of, nor are answerable to any for their Conduct, they are very seldom inquisitive about the Merits or the Circumstances of the Persons that apply; the Consequence of which is, that many unworthy Persons, and many who do not stand in need of it, are admitted into our Hospitals; which instead of being a Benefit, is a great Injury to the Nation, because it encourages Idleness and Extravagance among the Vulgar.

I wish with all my Heart that all the Poor of the Kingdom, who are real Objects of Charity, were properly and decently provided for. I am sure, if they are not, it is not for want of a sufficient Fund for that Purpose; it must be by some Defect in the Laws, with respect to the Management

management and Application of that Fund, and whatever Amendments may be necessary in that Respect, I shall readily agree to. But we ought to take Care, that some Sort of Ignominy or Contempt may always attend a Person's being provided for by any public Charity; and we likewise ought to take Care, that the Provision made by Charity shall not be such as no poor Man, by his utmost Industry and Frugality, can provide for himself. In both these Respects, I am afraid, our public Hospitals are blameable; for the Custom of going thither upon every Emergency is become so frequent, that no Contempt or Ignominy attends it; and the Provision made for our Poor in some of them, is much better than any common Tradesman or labouring Man can well hope to make for himself, with the utmost Industry and Frugality any poor Man can practise. The Consequence of this is, that the getting into an Hospital, or getting one's Child to be educated there, instead of being asked for as a Charity, comes to be solicited for as a Post or Employment; and rich Men get in to be Governors of Hospitals, not with the pious View of making an Interest in the next World by Works of Charity, but with the ambitious View of making an Interest in this, by having so many Posts or Preferments at their Disposal. This last View, I am apt to suspect, is the true Source of that Spirit which has been lately raised for erecting and endowing Hospitals; and as it is well known what Sort of Men are generally the chief Directors and Managers of such Hospitals, we may easily guess who have been the principal Authors and Promoters of such a Spirit. An Enquiry into the Management of our several Hospitals would have been of great Use in this Debate. If we had made such an Enquiry, I am persuaded we should have found many Persons upon such Foundations, who never had a Title to, and many who never had an Occasion for the Charity of the Public; and if we had examined into the Motives for admitting such Persons, I am also persuaded, we should have found them very far from being charitable. Such Misapplications can never happen in the Disposal of Parish-Charities; and as the admitting of such Persons to a Share of any public Charity, will always be a great Encouragement to Laziness and Extravagance, I can see no Reason for exposing the Nation to any Danger, for the Sake of erecting such charitable Foundations.

We know, my Lords, how apt Men are to indulge themselves in Laziness and Extravagance, from very chimerical Hopes: A Benefit-Ticket in a Lottery can fall but to one, but the Expectation of it makes Hundreds extravagant. In the same Manner, if People see one idle

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and profligate Person well provided for in an Hospital, or the Child of such a Man handsomely educated, and better taught than the Children of poor People usually are, Hundreds of them will, in Hopes of meeting with the same Relief, either live idly, or spend what they earn extravagantly, so that most of them, or at least their Children, must come upon the Parish at last. This must, of Course, increase the Number of our Poor, and the Burden upon every Parish; and this Consequence, my Lords, is fully confirmed from daily Experience; for there is no Nation in the World that has so great, or so many public Foundations for relieving the Poor as we have in *England*; and yet our People pay yearly more for that Purpose than is paid by the Poor of any other Country. In *Holland*, where the Poor are so well taken Care of, they have few or no public Hospitals, but every Town takes Care of its own Poor, and have proper Workhouses and little Hospitals for that Purpose, where none but real Objects are admitted; and if we had in every Parish a Workhouse and an Hospital, and no public Hospital in the Kingdom, I am persuaded our Poor would not be so numerous, and those that are real Objects would be generally better provided for than they are at present; for the greatest Objects are generally left upon the Parish, while unworthy Persons, or Persons who stand in no need of it, are admitted into our rich and magnificent Hospitals. This is a Grievance which cannot be prevented by the utmost Diligence and Application of the Governors, who are generally of too high a Rank for having any Acquaintance among the Vulgar; they must depend upon Information, they cannot depend upon their own Knowledge, and those who depend upon Information will often be deceived.

I beg Pardon, my Lords, for having taken up so much of your Time upon this Subject; but the Words Piety, Charity, and the Relief of the Poor, have been made so much use of in this Debate, that I thought it absolutely necessary to explain that Matter; and from what I have said I hope it will appear, that no Charity ought to be given without proper Enquiry: That such an Enquiry may be made by Parish-Officers; but never will, nor ever can be made by the Managers of public Hospitals; and that we have in this Kingdom a sufficient Fund for all real Objects of Charity without any public Hospital; from whence I think it must be concluded, at least, that we ought not to leave our Lands in Danger of being swallowed up, the Constitution overturned, and the Nation undone, for the Sake of erecting and endowing such Hospitals.

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' With respect, my Lords, to the Clergy of the established Church, I am really sorry to hear there are so many of them, so poorly provided for: It gives me a most affecting Concern to think, that there are so many pious and worthy Clergymen of the established Church struggling with Poverty and Want, at the same time that they are rendering such Services to their Country; and I must think it a Blemish in our Constitution, at least in that Part of it which is called the established Church, to have so many of its Members living in the greatest Penury and Distress, while a great Number of others are wallowing in the greatest Affluence and Ease; for since they are all the Servants of the Public, and are paid by the Public, every Man ought to have a proper Share of the public Rewards. Let us but compare our Conduct in this Respect to the Conduct of a private Family: Suppose any one of your Lordships, or the Master of any great Family, should give large and extravagant Wages to his Stewards, his Masters of the Horse, his Master-Cook, and his other superior Servants, but at the same Time should have all his lower Servants, who did the whole Business of his Family, kept in Rags, half starved, and without Shoes or Stockings: Would not every Man blame the OEconomy of such a Family? Would not every Man find Fault with the Conduct of the Master? How then can we justify our own Conduct with respect to the Clergy of our established Church? We find it is generally condemned; every Man admits, our poor Clergy ought to be better provided for; and for this Purpose the Corporation for the Bounty of Queen Anne was established: The Design of that Corporation was certainly to be highly approved of; but I cannot say the Rules they have laid down for accomplishing that Design deserve so much Approbation. They are to provide in two or three Centuries for all our poor Clergy; but how? By settling a great Part of the Lands in the Kingdom in Mortmain, which to me is the same as if the Master of the Family I have mentioned, should resolve to provide for his lower Servants, by selling-off or mortgaging a Part of his Estate yearly; which would, I am sure, be adding Madness to Foolishness. What then must he do? Is not the Method he ought to take, plain and easy? Ought he not to diminish the Salaries of some of his upper Servants, or dismiss some of them, and apply their Salaries to increasing the Wages of the inferior?

' I am not, my Lords, of any levelling Principles; I am for keeping up the same Orders and Distinctions, and the same Form of Government we now have in our established Church; but I am not of Opinion that it is necessary, or

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that any Man ought to have, or can deserve half a dozen rich Benefices at once; and a few Scrapings might, in my Opinion, be taken from many of our great Livings, after the Deaths of the present Incumbents, which would be sufficient for establishing a proper Maintenance for every Clergyman in *England*. Nay, even the Fund settled upon the Corporation for the Bounty of Queen *Anne*, if it were immediately parcelled out among the poorest Livings, it would, I believe, go near to make every Living in *England* worth 20 *l. per annum*; and if to this we should add all those Benefices which are of no Use to the Nation, nor any way necessary for the Support of our present Form of Church-government, I am sure we could very easily make a handsome Provision for every Clergyman in the Kingdom, without endangering our Constitution, by throwing too great a Part of our Lands into the Hands of the Church. Let us consider what a great Revenue our Church is already possessed of. I have been informed, that in a posthumous Work of a late reverend Prelate, who never had a Fault laid to his Charge, but that of being too high a Churchman, it is asserted, that the Revenue of our Church amounted then to two Millions and a half yearly, and that the whole Business was done by those who receive the half Million only. I am sure our Church Revenue is increased since that Time, and if what that Reverend Prelate asserts be true, I am sure it is high Time for us to put some Stop to their making any new Acquisitions in Land; especially considering that our poor Clergy may be all handsomely provided for, without allowing any more of our Lands to be settled in Mortmain, or making any Addition to the Revenues of the Church in general.

'This is an Opinion, my Lords, which every Layman must be of, who considers the Consequences of Things. We may easily calculate what a vast Land-Revenue must be added to the Church by the Rules the Corporation for Queen *Anne's* Bounty have established. They have laid it down as a Rule, that all our poor Clergy must be provided for by Purchases of Land in Mortmain. We have been told that there are in *England* 5500 Livings under 50 *l.* a Year, and of these 1000 under 10 *l.* a Year: Suppose them then, one with another, worth 25 *l. per annum* each; a Land Revenue of 412,500 *l. per annum* must therefore be purchased, in order to make them 100 *l.* a Year each. Then suppose there are 2000 Livings above 50 and under 100 *l.* a Year; if we take them at a Medium, which is 75 *l. per annum* each, a new Land-Revenue of 50,000 *l.* a Year must be purchased, in order to make them likewise 100 *l.* each. But, my Lords, I must beg you will consider, that even when

' when this is done, the Corporation is not to be dissolved, Anno. Geo. II.  
 ' nor are any of the Powers and Privileges they now have, 1736.  
 ' to cease; they may then resolve to make all these 7500  
 ' Livings worth 200 *l.* a Year each; for this Purpose new  
 ' Purchases of Land must be made to the Amount of 750,000 *l.*  
 ' a Year; and when this is done, they may, for what we  
 ' know, resolve to make every Living in *England* worth  
 ' 1600 *l.* or 2000 *l.* *per annum*, if there were Land enough  
 ' in the *British* Dominions for answering such a Demand. For  
 ' this Purpose they would stand in need of no new Powers, nor  
 ' any Privileges but what they have already vested in them by  
 ' Law; and I must say, the Rule they have laid down for  
 ' augmenting first those Livings, where any Layman will  
 ' join with them, is most excellently calculated for the speedy  
 ' Execution of such a Scheme; because a young Man in Or-  
 ' ders, who has 500 *l.* or even 1000 *l.* Fortune, & a Father  
 ' who has a Son to provide for, may easily be induced to join  
 ' his whole Fortune to the 200 *l.* advanced by them, in order  
 ' to make a Living of 40 *l.* a Year worth 90 or 100 *l.* a  
 ' Year, upon Condition of his getting a Presentation to the  
 ' Living. I do not in the least suspect that the present Go-  
 ' vernors of this Corporation have any such Scheme in their  
 ' Thoughts; but Men's Schemes generally grow with their  
 ' Fortunes; and as this Scheme may some Time or other be  
 ' formed by ambitious Clergymen, and may in Time be car-  
 ' ried into Execution, we ought to take Measures for pre-  
 ' venting it, before it comes too late; for if our Church  
 ' should get into their Possession 4 or 500,000 *l.* a Year  
 ' Land-Revenue, artfully purchased, more than they now  
 ' have, I am afraid it would be out of our Power to prevent  
 ' their pursuing any Scheme they had a mind to; or at least,  
 ' that we could not put any Stop to their Schemes without  
 ' running the Risque of raising the Flames of a civil War in  
 ' the Kingdom. I therefore think the Rule they have laid  
 ' down, of laying out no Money but upon the Purchase of Lands,  
 ' ought to be altered; and if that Rule be altered, there is no  
 ' Occasion for altering or explaining any Words in this Bill.  
 ' Having now, my Lords, shewn the Dangers that may  
 ' arise from the great Liberty lately introduced of alienating  
 ' Lands in Mortmain, and having shewn that we are under  
 ' no Necessity, nor have the least Occasion, for exposing our-  
 ' selves to such Dangers, I shall next beg Leave to take No-  
 ' tice of that unbounded Liberty of devising Estates by Will,  
 ' which we have heard so strongly insisted on. I shall grant,  
 ' that a Man has a natural Right to dispose of his own, at  
 ' what Time, and in what Manner he thinks most proper;  
 ' but this Rule is not without any Limitation or Exception;  
 ' it

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it must always be under this Restriction, that no Man shall dispose of his own to the Hurt and Prejudice of the Society to which he belongs ; and it is reasonable it should be so, because the Acquisition, or at least the Preservation of that Property depended, and must always depend upon the Protection he received from the Society. The Legislators of every Society, are the only Judges of what may or may not tend to the Hurt and Prejudice of the Society : According to their Judgment in this Respect, they have a Power to make Laws for regulating and restraining that natural Right which every Man has to dispose of his own ; and if those Laws be reasonable and necessary for the Preservation of the Society, every good Subject will observe them, and no bad Subject ought to be allowed to find fault with, or transgress them, I think I have made it evident, that a Liberty of devising Land Estates in Mortmain to any Corporation, or upon any Pretence whatsoever, may be hurtful to the Society ; and particularly, that those Pretences drawn from Piety, Charity, and a Compassion for the Poor, are so far from being real, that they are made use of only as a Cloak for the Vanity, the Pride, and the Ambition of private Men, who have got into, or expect to get into the Management of what they call charitable Foundations.

With regard to private Life, my Lords, can we suppose that a Man will be less industrious or frugal because he cannot dispose of his Estate by Will to the Church, or to a magnificent Hospital ? We may as well suppose that he will be less industrious or frugal, because he cannot dispose of his Estate to the Grand Seignior or the Sophy of *Persia*. If a Man happens to fall into that delirious Ambition of erecting a Palace for Beggars, and having his Name engraved in gilded Letters above a superb Portico ; or if he grows ambitious of having his Statue set up in the Area of any charitable Palace already erected, cannot he give some Part of his Estate in his Life-time for that Purpose, and reserve a sufficient Estate for supporting himself ? For we generally find that the Men who are seized with such Deliriums, are Men of great Fortunes and small Expence ; so that the reserving a Competency for their own future Support, cannot occasion any great Diminution in the Donation they make, nor can it disappoint the great End of their Ambition. As to the Regard and Attendance which a dying Man may expect, and ought to meet with from his Relations, Friends and Servants, I think nothing can be better contrived than the Bill now before us, for preventing a Man's being disappointed in so just an Expectation ; because it lays every

every landed Gentleman under a Necessity of reserving something to be disposed of by him at his Death, and likewise lays him under a Necessity of disposing of that something among his Relations, Friends or Servants, or of leaving it to his next Heirs. For this very Reason, I think the Words at the End of the first Clause proposed to be left out, are absolutely necessary; and therefore I hope they will be left standing as Part of this Bill.

Whether a Man's next Heirs have any natural Right to succeed to his Estate after his Death, is not the Question now before us: I hope it will be granted, they have at least a more natural Right than any other Person natural or political; and I am sure the giving or leaving it to them, or to any other Persons natural, is more charitable than the giving it to any charitable Use or Corporation whatsoever; because, when the Estate comes to private Persons, they will be enabled to contribute the more to the Parish-Charities in the respective Parishes they belong to, which are the only Charities that are, or ever can be properly or justly applied; whereas, when the Estate is given to any other charitable Use, or to any Corporation, or even to the Church, the Donor may expect and depend upon it, that the Donation will be misapplied; and every such Donor may see, that the giving of any such Donation may be of dangerous Consequence to his Religion as well as his Country. Therefore, as a sincere Christian, as a true Lover of the Church of *England*, without being an Admirer of ecclesiastical Power, and as a good Subject, I must be for laying, at least, that Restraint upon such Donations, which is proposed by the Bill now before us. And one of my chief Reasons for being so, is, my Lords, lest the Clergy of our established Church should be tempted and instructed to watch the last Moments of dying Persons, as insidiously as ever the Monks and Friars did in the darkest Times of Popery and Superstition: The Opportunity is established by the Laws as they stand at present; they may, by so doing, increase the Wealth and the Power of the Church, nay, they may increase the Revenue of their own particular Cure; and if ever we should have an ambitious Clergyman for a prime Minister, it would be the only way to acquire an Interest at Court, or Preferment in the Church. These were all the Motives the Popish Clergy had for being so insidious, they never proposed by such Insidiousness, to enrich their own private Families; and if this Stumbling-block should be left any longer in the way of our present Church, we may depend on it, that new Doctrines will be set up, and all the ensnaring Tenets of the Church of *Rome* revived.

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by Degrees, and strongly recommended by all pastoral Instructions.

‘ I shall conclude, my Lords, with observing, that our two Universities, and the Colleges now excepted out of this Bill, are, in my Opinion, the only public Foundations, which are either useful or necessary in this Kingdom, and the Exception, as to them, furnishes me with a particular Argument in favour of this Bill; because I think it will contribute greatly to increase the Revenues of every one of those Foundations; for as every other Channel for Death-bed Devises will from henceforth be shut up, I must think it will cause the more to flow into that Channel. The Pride and Ambition of Men, which I suppose (and, since our Poor are all sufficiently provided for otherwise, I think I may without any Breach of Charity suppose) to be the chief Motive for all Donations to Hospitals or incorporate Bodies, will still remain the same; and those who cannot upon their Death-beds propose to eternise their Memories by procuring their Statues to be set up in the Area of an Hospital, will endeavour to get it set up in the Area of a College, and for that Purpose will leave them an Estate. This is turning the Passions of private Men to that which is most useful and necessary for the Society, which is one of the chief Ends of all political Regulations. Therefore, my Lords, as a Friend to our Universities and other Seminaries of Learning, and from the great Desire I have to encourage Learning, and to see all learned Men sufficiently provided for, I must declare my Approbation of the Bill now under our Consideration.’

Then this Bill was accordingly pass’d, and receiv’d the Royal Assent the last Day of the Session.

May 2. *The following Bill for the more easy Recovery of the Tythes, Church-Rates, and other ecclesiastical Dues, from the People called Quakers, was sent up by the Commons to the House of Lords.* †

‘ **W**HEREAS by an Act made in the 7th and 8th Year of the Reign of his Majesty King William III. of glorious Memory, entitled, *An Act that the solemn Affirmation and Declaration of the People called Quakers, shall be accepted instead of an Oath in the usual Form,* a Remedy is provided for Recovery of Tythes and Church-Rates, not exceeding the Value of ten Pounds, where Quakers do refuse to pay the same. And

Copy of the  
Quaker’s Tythe  
Bill.

† See the Proceedings on this Bill in the other House, in the Introductory Minutes to *Candler’s History* of this Session, Page xiv. xv. as likewise, *Anno 9 Geo. II. 1735-6.* Page 152, 174, 221, \*225, \*226, \*227, \*228, \*229, \*230.

And whereas by another Act made in the first Year of the Reign of his late Majesty King *George I.* the said Remedy is extended, and may be had and used against any Quaker or Quakers, for recovering any Tythes or Rates, or any customary or other Rights, Dues or Payments belonging to any Church or Chapel, which of Right, by Law and Custom ought to be paid for the Stipend or Maintenance of any Minister or Curate officiating in any Church or Chapel.

And whereas the prosecuting of any Suit in the superior or ecclesiastical Courts against any Quaker or Quakers, for any Refusal arising from a Scruple of Conscience, to set out, pay, or compound for his or their great or small Tythes, may be unnecessarily expensive and grievous to such Quakers, if the said Tythes can be recovered in a more easy and expeditious Manner.

Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in this present Parliament assembled, and by the Authority of the same, That from and after the 24th Day of *June*, one thousand seven hundred and thirty six, where any Quaker shall refuse or neglect, within ten Days after Notice given, to set out, pay, or compound for, his great or small Tythes, or to pay any Oblation, or other ecclesiastical Dues (except Church Rates) or any Rights or Payments whatsoever, belonging to any Church or Chapel, which of Right, by Law or Custom ought to be paid, for the Stipend or Maintenance of any Minister or Curate, officiating in any Church or Chapel, it shall and may be lawful for any two or more of his Majesty's Justices of the Peace within the County, Riding, Town corporate, or Division, where the same shall grow due (other than such Justice of the Peace, as is Patron of the Church or Chapel where the said Tythes or Dues do arise, or any way interested in such Tythes or Dues) and such Justices are hereby authorised and required, upon Complaint of the Parson, Vicar, Curate, Farmer, or Proprietor of, or Person intitled to such Tythes, Dues, or Payments, as aforesaid, or any other Person who ought to have receive, or collect the same, by Writing under their Hands and Seals, to summon, by reasonable Warning, such Quaker or Quakers, against whom such Complaint shall be made, to appear before them; and also, at the Request of any of the Parties, by Summons in Writing under their Hands and Seals, to convene before them all and every such Persons and Witnesses, to give Evidence touching the Matters complained of, as any or either of the

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Parties shall require ; and after the Appearance of such Quaker or Quakers, or in Default of his or their Appearance (the said Warning or Summons being proved before the said Justices upon Oath) they the said Justices, or any two of them, shall proceed to hear the Matter of the said Complaint, upon the Proofs, Evidences and Testimonies to be produced before them ; and for that Purpose to examine as well the said Quaker and Quakers, in case of his or their Appearance, upon his or their solemn Affirmation, as the several Persons or Witnesses to be convened before them, or otherwise produced at such Hearing, upon his or their corporal Oaths, or otherwise, as by this Act is after directed ; and thereupon to state, ascertain, and determine what is due, payable or forth-coming by and from such Quaker or Quakers, to the Party or Parties so complaining, and by Writing under their Hands and Seals to make a proper Adjudication thereupon, and thereby to order and award such reasonable Satisfaction, Compensation, and Recompence in Money, to be made and paid to the Party or Parties so complaining as aforesaid, as they shall judge to be just and reasonable for such Tythes, Oblations, or other ecclesiastical Dues so neglected or refused to be set out, paid, or compounded for, as aforesaid, together with such Costs for the same, according to the Nature and Merits of the Case, as to them the said Justices shall seem reasonable ; and by such Order to direct and appoint the Payment of the Sum to be awarded, as aforesaid.

And be enacted, That if any Quaker or Quakers shall refuse or neglect, by the Space of ten Days after Notice of such Adjudication, to pay or satisfy any such Sum of Money, as, upon such Complaint and Proceeding shall, by such Justices, as aforesaid, be adjudged in Manner as aforesaid ; then and in every such Case, it shall and may be lawful for any one of the said Justices, upon Oath made of the Service of a Copy of such Order of Adjudication, or of leaving a Copy of the said Order at the usual Place of Abode of such Quaker or Quakers, by Warrant under his Hand and Seal, directed to some Constable, or other proper Officer, to order the Money, so awarded to be paid as aforesaid, to be levied by Distress and Sale of the Goods and Chattels of such Quaker or Quakers, so refusing or neglecting as aforesaid, his and their Executors and Administrators, rendering the Overplus to the Owner of such Goods and Chattels (if any such shall be) the reasonable Charge of making the said Distress, and of selling the said Goods and Chattels, being thereout first deducted and paid to the Party or Parties so complaining, as aforesaid : And if

if it shall appear to such Justices upon Oath, that no sufficient Distress or Distresses can be had or made for the Purposes aforesaid; then and in that Case any one of the said Justices, or any other Justice of the Peace of the same County, is hereby impowered and required, by Warrant under his Hand and Seal, directed to the proper Officers, to commit such Quaker or Quakers so refusing or neglecting, as aforesaid, to the common Jail of the County, City, Liberty, or Place, where such Quaker or Quakers shall reside, there to remain, without Bail or Mainprize, until full Payment be made to the Party or Parties so complaining, as aforesaid, of all such Sums and Costs as by the said two Justices shall have been awarded by such Order as aforesaid. And to the end the said Justices may be enabled to make such Adjudication as shall be just, upon the Matters so to be complained of, as aforesaid, the said Justices are hereby impowered and required to examine all such Witnesses and other Persons, as shall be produced or convened before them, upon their corporal Oaths (which Oath, and all other Oaths required to be taken by this Act, the said Justices are hereby authorized to administer) but if any such Persons or Witnesses shall be a Quaker, then such Quaker shall be examined upon his solemn Affirmation, according to the Laws and Statutes of this Realm, and the said Justices shall cause the same to be tendered to him accordingly; and if any Person or Persons being so summon'd, as aforesaid, to give Evidence touching the Matters complained of, as aforesaid, shall without just Cause refuse to appear before the said Justices, or having appeared before them shall refuse to be examined, or to testify or depose, in Manner as aforesaid, concerning the Matters so complained of, as aforesaid, and shall wilfully persist in such Refusal, then and in every such Case, all and every Person and Persons so offending, as aforesaid, contrary to the true Intent of this Act, shall for every such Offence, on being thereof convicted before the said Justices, forfeit a Sum not exceeding five Pounds to the Poor of the Parish or Parishes where such Tythes or Dues do arise, to be levied by Distress and Sale of such Offender's Goods and Chattels, by Warrant under the Hand and Seal of such Justices, or either of them, or any other Justice of the Peace within the County where such Offender shall reside, rendering the Overplus (if any shall be) to such Offender, his Executors or Administrators.

And for the more effectual preventing all unnecessary and expensive Prosecutions against Quakers, be it farther enacted by the Authority aforesaid, That from and after the

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the said 24th Day of *June*, where any Quaker or Quakers shall refuse or neglect to set out, pay, or compound for any great or small Tythes, Oblations, or other ecclesiastical Dues, as aforesaid (except Church-Rates) no Person or Persons shall prosecute any Suit, or Commence any Action, or file any Bill in any of his Majesty's Courts of Law or Equity at *Westminster*, or in any other Court whatsoever, for the Recovery thereof, until after Complaint shall be made by some of the Parties interested in the said Tythes or ecclesiastical Dues, and some Adjudication or Order thereupon shall be made by the Justices, by this Act empowered to hear and determine the Matter of such Complaint, as aforesaid: And in case it shall appear by such Order and Adjudication, and the said Justices shall so certify therein (which the said Justices are hereby required to certify accordingly, without Fee or Reward) that the Quaker or Quakers so complained of did not, at the Time of examining into, and hearing the Matter of the said Complaint, either by him or themselves, or by his or their Agents, controvert, litigate, or otherwise oppose the Payment of such Tythes, Oblations, or ecclesiastical Dues, but did either confess the same to be due, or not gainsay or obstruct the Adjudication or Recovery, and Levying thereof, or suffer Judgment or Sentence before the said Justices to go against him by Default, by not appearing to gainsay the Recovery and Levying thereof; then and in every such Case, the Order, Award and Adjudication so to be made by the said Justices, upon the Matters to them complained of, shall be absolutely final and conclusive to all Parties, as well to such as shall be interested in the said Tythes, Oblations and ecclesiastical Dues, as to the said Quaker and Quakers, to all Intents, Constructions and Purposes whatsoever; and no Quaker or Quakers shall be sued or prosecuted, for, or on account of, such Tythes, Oblations, or other ecclesiastical Dues, in any ecclesiastical or other Court whatsoever after such Adjudication and Certificate, by Appeal or otherwise howsoever. And no Libel shall be exhibited, or any Suit instituted or prosecuted in any ecclesiastical Court, or any Action commenced, or Bill filed, in any of his Majesty's Courts of Law or Equity at *Westminster*, or elsewhere, touching or concerning the same; except only in Cases where the Title of such Tythes shall be in Question, as in this Act after is mentioned.

Provided always, and be it also enacted by the Authority aforesaid, That where any Quaker or Quakers, by themselves or their Agents, shall any ways controvert or litigate, or otherwise obstruct the Recovery of such Tythes, Oblations,

' Oblations, or ecclesiastical Dues before the said Justices, Anno 9. Geo. II.  
 ' and the said Justices shall, upon Debate of the Matter, 1736.  
 ' make such Order, Award and Adjudication thereupon as  
 ' to them shall seem just; and shall therein certify, whether  
 ' any such Controversy, Litigation or Debate was then had  
 ' before them (which they are hereby required to certify  
 ' accordingly, without Fee or Reward) that then and in  
 ' every such Case, if either the Parson, Vicar, or other  
 ' Person interested in, or entitled to the said Tythes, Ob-  
 ' lations, and ecclesiastical Dues, or the Quaker or Quakers  
 ' so complained of, and summoned, as aforesaid, shall find  
 ' him or themselves aggrieved by the Order, Award and  
 ' Adjudication so to be made by the said Justices, as afore-  
 ' said; and shall thereupon, within ten Days after the Ser-  
 ' vice of a Copy of the said Order, Award, or Adjudication;  
 ' give notice in Writing, under his or their Hands, to the  
 ' said Justices, that he or they conceive him or themselves  
 ' aggrieved, and that he or they refuse to abide by the  
 ' Determination given by the said Justices, by the said Or-  
 ' der, Award or Adjudication; then and from, and im-  
 ' mediately after such Notice, the said Justices shall surcease  
 ' and forbear to make any Distress, or otherwise proceed  
 ' upon such their Order, Award or Adjudication, or other-  
 ' wise howsoever. And then, in that Case, it shall and  
 ' may be lawful to and for all and every the Parties to re-  
 ' sort to such Remedy by Suit, Action, or Bill, in any of  
 ' his Majesty's Courts at *Westminster*, as he or they shall  
 ' think proper to resort unto; either for the better Reco-  
 ' very of such Tythes, Oblations, or ecclesiastical Dues,  
 ' or for discharging himself from the Payment thereof. And  
 ' all and every Person and Persons shall have and enjoy all  
 ' and every the like Remedies, and shall be entitled to the  
 ' like Actions, Suits, and Advantages, as well for the Re-  
 ' covery of such Tythes, Oblations, and ecclesiastical Dues,  
 ' and all Costs for subtracting or with-holding the same, as  
 ' for the discharging him and themselves from the Payment  
 ' thereof, in any of his Majesty's Courts at *Westminster*, in  
 ' as full and ample a Manner as he and they might have  
 ' had and enjoyed, or been entitled to by the Laws and  
 ' Statutes of the Realm, had not this Act been made. And  
 ' his Majesty's Courts of Law and Equity at *Westminster*  
 ' shall have full Power and Authority, if they shall see  
 ' Cause (but subject to the Proviso in this Act after contain-  
 ' ed) to award such Costs as shall be reasonable for the  
 ' Vexation, Expence, and Delay before the said Justices,  
 ' by whose Adjudication the said Parties shall have con-  
 ' ceived themselves aggrieved, as aforesaid; any thing  
 ' in

An. 10 9. Geo. II. 1736. in this Act contained to the contrary notwithstanding.

And be it farther enacted by the Authority aforesaid, that where any Decree or other Judgment shall be obtained in any of his Majesty's Courts at *Westminster*, Execution of such Decree or Judgment shall be made by Process directed to the Sheriff, requiring him to levy the Money so decreed or adjudged upon the Goods and Chattels of the said Quaker or Quakers, his and their Executors and Administrators; and if the Sheriff shall return that he can find no Goods sufficient, whereon to levy such Money, then by Imprisonment of their Persons. And the said several Courts are hereby authorized and empowered to award such Execution in all Cases within the true Meaning of this Act.

Provided always, and it is hereby also enacted, That where any Judgment, Decree, or Order shall be made, passed, or pronounced in any of his Majesty's Courts at *Westminster*, in any Cause or Suit to be commenced or prosecuted by any Persons, who shall conceive themselves aggrieved by the Award, Order, and Adjudication of the Justices hereby empowered to hear and determine any Complaint relating to any Quaker or Quakers neglecting or refusing to set out or pay such Tythes and Dues as aforesaid; that in every such Case, if the Sum ordered, enjoined, and directed to be paid by the said Quaker or Quakers, in recompence of the Tythes by him or them withheld, shall not exceed the Sum before ordered and awarded by the Order, Award, and Adjudication of the said Justices, to be paid by the said Quaker or Quakers, no Parson, Vicar, Curate or other Person entitled to such Tythes, or Dues as aforesaid, shall have or be entitled either to double or treble Value, by virtue of the Statute made in the second Year of King *Edward VI.* or to any other Costs or Damages whatsoever, or to any other Sum in respect of his and their Charges or Expences in any or either of the said Courts, where such Judgment or Decree shall be obtained, given, or pronounced, or in any other Court or Place whatsoever; but that he and they shall be, and is, and are by this Act utterly excluded therefrom, and shall pay to such Quaker or Quakers his Costs, to be assessed by the Courts wherein such Judgment or Decree shall be obtained; any Law, Statute, or Usage to the contrary in any wise notwithstanding.

Provided always, and be it enacted by the Authority aforesaid, That if any Person, thinking himself aggrieved by any Determination of the Justices, as aforesaid, shall there-

thereupon give such Notice as aforesaid to the said Justices, of his Refusal to abide by such Determination; it shall and may be lawful for such Person, who shall first give Notice as aforesaid, to appeal from the same unto the Judges of Assize, who shall next hold the Assizes or Sessions for the County or Place, wherein such Determination shall be made, instead of having recourse to his Majesty's Courts at *Westminster*; and in that Case, such Person shall give notice in Writing of such his Intent to appeal, unto the Justices who made such Determination, before their Judgment shall be executed, and at least eight Days exclusive before the holding such next Assizes or Sessions. And such Judges of Assize, or any or either of them, may and shall, in a summary Way, examine the Parties and Witnesses, in such manner as the Justices are hereby directed to do; and may and shall hear, and finally adjudge and determine such Appeal, either by affirming, altering, or reversing the Judgment appealed from; and also give such Costs against either Party, as to him or them shall seem just and reasonable; and shall issue his or their Warrant, directed to the High-Constable of the Hundred, or the Constable of the Parish or Place within any City or Town corporate wherein such Quaker or other Person shall inhabit, to levy by Distress and Sale of the Goods of the Person against whom such Judgment shall be made, the Sum and Costs so adjudged by him or them, in like manner as the said Justices, to whom the said Complaint was originally made, might have done; had there been no such Appeal. And in case of such Appeal, either of the Justices, before whom such Complaint shall have been originally made, shall summon all such Persons to appear before such Judges of Assize, to give Evidence concerning the Matter of the said Appeal, as the Parties shall respectively require. And all Persons so summoned, are hereby required to attend pursuant thereto, or in Default thereof (having no just Cause of Excuse, to be allowed by the said Judges of Assize, or any or either of them) shall forfeit a Sum, not exceeding five Pounds, to the Poor of the Parish or Parishes, where such Tythes or Dues do arise, to be levied by Distress and Sale of the Offenders's Goods, by Warrant from any one of the said Judges of Assize, returning the Overplus, if any.

And be it farther enacted, That from and after the said 24th Day of *June*, if any Quaker, after Notice given him by any Person entitled to predial Tythes, arising from Lands occupied by him, or by one authorized to receive the same, shall refuse or neglect to set out, or cause to be set, such Tythes, if payable in Kind, and not other-

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wife, by Custom, Composition, or Modus, it shall and may be lawful for such Person, entitled as aforesaid to such predial Tythes, to appoint a proper Person for that Purpose, who is hereby authorized to come upon the Land of such Quaker, from whom such Tythe is due, and justly and truly, and without Fraud or Partiality, divide, set out, and sever from the nine Parts the said Tythe, in such Manner as all Persons are by Law obliged to set out their respective predial Tythes; such Person so appointed, having first taken an Oath before any Justice of the Peace of the County or Place where such Tythes arise, justly to set out the said Tythes as this Act requires, according to the best of his Knowledge, without Fraud or Partiality: Which said Portion so set out is hereby declared to be, and shall be deemed as Tythe to all Intents, and shall be quietly carried away, as soon as reasonably and conveniently may be, by the Person entitled thereto, or any one or more Persons appointed by him for that Purpose, without any Interruption by the said Quaker, or on his Behalf, in the same Manner as might lawfully have been done, had such Tythes been set out by the Quaker himself, from whom the same is due. And no Quaker shall after such Notice, and before the setting out, or after such Tythe shall be so set out, withdraw or take away, or cause to be withdrawn or taken away the said Tythes, if payable in Kind, under the Pain of Forfeiture of the double Value of what shall be so withdrawn or taken away, to be recovered against him by Action of Debt, Bill, Complaint, or Information, in any of his Majesty's Courts at *Westminster*, in which no *Essoign*, Protection, Wager of Law, or more than one *Imparlance* shall be allowed, in case the Person entitled to such predial Tythes so withdrawn shall chuse to sue in any of the said Courts for the same. Nevertheless, it shall be in the Option of the Person entitled to such predial Tythes so withdrawn, to waive the said Forfeiture of the double Value, and proceed before two Justices, as herein before directed, for Recovery of the single Value only of such predial Tythes so withdrawn, and Costs, if he shall think fit so to do. And in case the Person entitled to such predial Tythes shall proceed before the said Justices in Manner aforesaid, then, and in every such Case, such Quaker, so withdrawing or taking away the same, shall not be liable to be sued or prosecuted on account of not setting out such Tythe, or carrying away the same, in any other Court, or in any other Manner whatsoever, than as by this Act is directed.

Provided always, that if the Person appointed to set out the said Tythes shall through, any wilful Default of the

the Quaker, be necessarily put to any unusual or extraordinary Trouble in harvesting and preparing the said predial Tythes, in order to the setting out the same, and over and above the setting out thereof, according to the Custom of the Place; that then, upon Complaint thereof to any Justice of the Peace of the County or Place where such Tythes do arise, and Summons and Examination into the Matter by the said Justice, it shall and may be lawful for such Justice finally to order and appoint what shall be paid by such Quaker, in respect of such unusual or extraordinary Trouble; and on Refusal of Payment, to levy the same by Distress and Sale of the Quaker's Goods, rendring the Overplus after the Costs of the Distress deducted.

And be it farther enacted by the Authority aforesaid, That if any Person or Persons, against whom any such Judgment or Judgments shall be had, as aforesaid, shall remove out of the County, Riding, City, or Corporation, after Judgment had as aforesaid, and before the levying the Sum or Sums thereby adjudged to be levied; the Justices of the Peace who made the said Judgment, or one of them, shall certify the same under his or their Hands and Seals, to any Justice of the Peace of such other County, City or Place, to which the said Person or Persons shall go, or be removed unto; which Justice is hereby authorized and required, by Warrant under his Hand and Seal, to order such Sum or Sums to be levied on the Goods and Chattels of such Person or Persons, as fully, and in the same manner, as the other Justices might have done, if such Person or Persons had not removed, as aforesaid; which shall be levied and recovered according to the said Judgment.

And be it farther enacted by the Authority aforesaid, That from and after the 24th Day of June, one thousand seven hundred and thirty six, if any Quaker shall refuse to pay any Sum or Sums of Money, duly and lawfully assessed or charged on him or her by any Church or Chapel Rates, it shall and may be lawful for any two Justices of the Peace, where such Quaker inhabits, and they are hereby required, upon Complaint to them made by the Churchwardens empowered to collect such Rate, to cause the same to be levied by Distress and Sale of the Goods of such Quaker, in the same manner as the Rates for the Relief of the Poor may be levied: And no Quaker shall be sued or prosecuted, for not paying any Church or Chapel Rates, in any other manner whatsoever.

Provided always, That no Distress to be taken by virtue of this Act, shall be excessive or unreasonable: but shall be proportioned to the Value of the Sum awarded or forfeited; and the Goods distrained shall be publickly sold.

Anno q. Geo. II.  
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‘ Provided also, and be it enacted, That where any Quaker or Quakers complained of for substracting, withholding, not paying or compounding for any such Tythes, Church Rates, Oblations, or other ecclesiastical Dues, as aforesaid, shall, before the Justices of the Peace, to whom such Complaint is made, alledge or insist upon any Prescription, Composition, or *Modus decimandi*, Exemption, Discharge, Agreement, or Title, whereby he or she is or ought to be freed from Payment of the said Tythes or other Dues in question ; and deliver the same in Writing to the said Justices of the Peace, subscribed by him, her, or themselves ; in that Case, the said Justices of the Peace shall forbear to give any Judgment in the Matter ; and that then and in such case, the Person or Persons so complaining shall and may be at Liberty to prosecute such Quaker or Quakers, for the Matters aforesaid, in any Court or Courts whatsoever, where such Person or Persons might have sued for the same before the making of this Act, any thing in this Act contained to the contrary notwithstanding.

‘ Provided always, and be it farther enacted by the Authority aforesaid, That in all Cities and Towns corporate where, for the Time being, one Justice of the Peace only shall be resident ; in every such case it shall and may be lawful to and for such one Justice, together with any one Justice of the Peace of the County (not Patron, nor interested) to execute all the Powers, Directions, and Authorities in this Act contained and directed to be done by two Justices of the Peace ; and in case no Justice of the Peace shall be resident in such City or Town corporate, then two Justices of the County may execute all such Powers, Directions, and Authorities.

‘ And be it farther enacted by the Authority aforesaid, That so much of the herein before in part recited Acts, made in the 7th and 8th Year of the Reign of his late Majesty King *William III.* and in the first Year of his late Majesty King *George I.* as relates only to the Recovery of Tythes or Rates, or any customary or other Rights, Dues, or Payments belonging to any Church or Chapel, which of right by Law and Custom ought to be paid for the Stipend or Maintenance of any Minister or Curate officiating in any Church or Chapel, in the manner thereby provided, shall be, and is hereby repealed.

‘ And be it farther enacted by the Authority aforesaid, That it shall and may be lawful for any Person sued or prosecuted for any thing done pursuant to the Directions of this Act, to plead the general Issue ; and on that or any other Issue to give this Act, and the special Matter in Evidence : And

‘ And if a Verdict or Judgment shall be for the Defendant, or the Plaintiff shall be nonsuit, or discontinue his Action, the Defendant shall recover treble Costs, in such manner as Costs in other Actions given to Defendants are recoverable : And no Suit or Prosecution shall be commenced against any Person, for any thing done in pursuance of this Act, unless the same be brought or commenced within six Months after such Cause of Action arises.

Anno 9. Geo. II,  
1736.

‘ And be it farther enacted by the Authority aforesaid, That this present Act shall be deemed, and is hereby declared to be a public Act, and shall be taken notice of as such by all Judges, Justices, and other Persons whatsoever, without specially pleading the same.’

This Bill having been read in the House of Lords a first time, and ordered to be read a second time on the 12th of May, and many Petitions having been likewise presented against it to that House, the Petitioners were ordered to be heard by their Counsel upon the second Reading, and it was ordered that Counsel should also be admitted to be heard in favour of the Bill at the same time.

Accordingly, on the 12th, the Bill was read a second time, and the Counsel for and against the Bill were in part heard, which Occasion, a Question arose about the Proofs to be laid before the House by the Counsel for the Bill, in relation to the Hardships and Persecutions the Quakers had suffered, by tedious and expensive Suits, for Tythes, in the ecclesiastical and other Courts ; for the Counsel for the Bill having acquainted the House, that with respect to Prosecutions in the *Exchequer*, they could bring proper and legal Proofs, to wit, Copies of the Records which had been duly examined, and would be proved at their Lordships Bar to be true Copies ; but with respect to the Prosecutions in the ecclesiastical Courts, they had indeed Proofs, but they were such as they could not call legal Proofs, because it was only the parol Evidence of Persons who had been concerned in the Suits, and therefore they must submit it to their Lordships whether they would allow any such Proofs to be laid before them ; upon which there was some Debate in the House, and the Question being at last put, it was carried in the Negative.

Next Day the Counsel for and against the Bill having finish- ed, and being withdrawn, a Motion was made for committing the Bill, whereupon a very long Debate ensued, in which the Arguments for the Motion were to the following Effect, *viz.*

‘ My



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Debate thereon.

My Lords, I believe it will be admitted by every Lord in this House without any Exception, that Persecution of any kind is inconsistent with the Principles of Christianity, I am sure it must be admitted by all, that it is inconsistent with the Nature of our Constitution and Government; and it must be granted, that every sort of Punishment, every sort of Oppression, which a Man is subjected to, for not doing that which in his Conscience he thinks unlawful for him to do, is a sort of Persecution. We know, my Lords, it was once established as a fundamental and necessary Article of the Christian Faith, that Tythes were due of Divine Right to the Church, that it was a most damnable Sin to convert them to any other Use; and that as they were *inter Spiritualia*, every Dispute in relation to them, was to be heard and determined by the spiritual Courts, and by them only. These Doctrines, it is true, are now pretty much exploded, at least in this Kingdom; but ridiculous as they are, they were for many Years strenuously insisted on, and most industriously spread, which gave occasion to that Sect of Men called Quakers, to establish it as one of the Articles of their Faith, That Tythes were abolished by the Christian Doctrine, and that so far from being of Divine Right, it was inconsistent with Christianity either to exact them or pay them: From hence it is that every Man who is truly and sincerely a Quaker, is in his Conscience convinced, that it is unlawful for him to pay Tythe.

But unluckily, my Lords, for the Quakers, those who were the Patrons and chief Promoters of the Reformation in these Kingdoms, though they abolished the Doctrine, that Tythes were due of Divine Right to the Church, yet as the Tythe brought in a great Revenue, and as it was a Tax the People had been long accustomed to, they thought it very proper and mighty convenient for them to continue the Tax; therefore they made them due by the Laws of the Land, though they admitted they were not due by the Laws of the Gospel. This however was no Salve for the tender Consciences of the Quakers; for as those Laws made the Tax still payable as Tythe, they thought they could not in Conscience voluntarily comply with what was enjoined by such Laws; and even to this Day, tho' they must admit that Tythes are due by the Law of the Land, yet they think they cannot in Conscience pay them, till they are compelled by the Law so to do. I confess, my Lords, this appears to me a little whimsical; but I am not to measure another Man's Conscience by my own, nor ought I to oppress him because he makes a Matter of Conscience of an Opinion which I take to be whimsical; and if I ought not myself in such a Case to be guilty

guilty of Oppression, I am sure I ought to prevent another's Anno. Geo. II. being guilty of it, as far as lies in my Power.

Tythe, my Lords, is a Tax which is now due by the Law of the Land, and must, I believe, remain so, therefore the Quaker must pay it as well as every other Man subjected to it by Law, nor does he desire to be absolutely free from it; he only desires, since his Conscience will not allow him to pay it voluntarily and freely, that you would take it from him in the easiest and least expensive Method you can: He knows that he must pay the Costs of every Suit commenced against him for the Payment of that Tythe which is due by Law, and he only desires that the Costs of Suit may be made as easy as possible. This was thought so reasonable a Demand, that a Law was made in the Reign of King William, by which Tythes not exceeding 10 *l.* in Value were made recoverable from Quakers before the two next Justices of the Peace of the same County, not interested in the Tythe to be so recovered; and it was at that Time expected, that every Man in the Kingdom, entitled to Tythes, would have taken that easy Method of recovering his Tythes from Quakers; but it has since been found by Experience, that some Persons entitled to Tythes, from a Spirit of Persecution and Oppression, for I can call it nothing else, have had recourse to Ecclesiastical and other expensive Courts for the Recovery of those Tythes, which they might have recovered by the Sentence of two neighbouring Justices; by which the poor Quaker has often been compelled to pay, not only what was due for Tythe, but ten times more by way of Costs of Suit, to the utter Ruin of him and his Family.

It is true, my Lords, we are not furnished with all the Proofs we might have had, of such Oppressions having been committed; though I am convinced, if the Quakers had thought such Proofs necessary, or if we had allowed them to lay before us the Proofs they had prepared, we might have been furnished with a considerable Number. But suppose we had not one Proof of any such Oppressions having ever been committed, suppose there never had been a Surmise of any such Oppression, it is certain, that, as the Law stands at present, such Oppressions may be committed; and as it is our Duty to endeavour to prevent as well as punish all manner of Oppression, we ought to make some Alteration in the present Laws relating to the Recovery of Tythes, especially considering how apt some People are to oppress and persecute those who dare to differ from them in any Opinion. When we are about to make or repeal any Law, in order to prevent a Grievance that may be apprehended, it is no way necessary for us to have any Proofs that the Grievance has been actually felt.

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Annog. Geo. II. felt.  
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When the Law *de Hæretico Comburendo* was repealed, there were then no Proofs before either House of Parliament, that a bad Use had been made of that Law; it was thought sufficient that a bad Use might be made of it, and as that was apparent, the Law was therefore repealed: Even last Session, when the Law was made for regulating the Quartering of Soldiers at the time of Elections, there was not so much as the least Surmise of any Grievance having arisen from thence; and this very Session, when we passed the Bill for repealing the Laws against Witchcraft, there was not the least Proof so much as desired, that ever any old Woman had been burnt for a Witch. From all which it is plain, that, in order, to prevail with either House of Parliament to pass or repeal any Law, it is sufficient to shew that a Grievance may ensue, if the Law be not passed or repealed.

Now, my Lords, in the present Case, it is no Persecution or Oppression to take from the Quaker in the easiest and least expensive manner those Tythes which are due by the Law; but when they can be recovered without subjecting him to any great Expence or Inconvenience, it is Persecution as well as Oppression, to sue for them in such a way as must necessarily load him with a prodigious Expence; because, though the Plaintiff may perhaps call his Refusal Obstinacy, yet in Charity we are obliged to call it Conscience; and therefore we must call that a persecuting of him for Conscience Sake, which the Plaintiff may perhaps call a punishing of him for his Obstinacy. By the first Law for making Tythes recoverable from Quakers before two neighbouring Justices in the Country, a cheap and easy Method is provided for the Parson to recover those Wages, or that Maintenance which is due to him by Law; and this Method has been found so effectual, that every wise and good-natured Parson in the Kingdom has always chosen it, because he found he could thereby come speedily at his Right without vexing and ruining his Neighbour, the Quaker, by a tedious and expensive Suit, for that which his Conscience would not permit him to pay till he was compelled by due Course of Law: But the Method by that Act provided, appears to be deficient in two respects; First, That it does not allow any Tythes above the Value of 10 *l.* to be recoverable before two Justices; and the other, That it leaves to the Incumbent, or any other Person entitled to Tythes, an Option to prosecute for the Recovery of his Tythe, either in this cheap and easy Method, or in the most vexatious and expensive Method he can think of. As to the first of these Defects, it has been deemed, and I think it is evident, that two neighbouring Justices of the Peace are as capable to settle and ascertain a Claim of 100 *l.* as they are one of 10 *l.* provided there be no Matter of Law or Right in Dispute; and since in

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our supreme Courts the Value of any such Claim is always settled and ascertained by Juries, I cannot think but that two or more neighbouring Gentlemen who have the Honour to be in the Commission of the Peace, are as capable to settle and ascertain such a Claim, as any twelve Tradesmen or Farmers in the County; for this Reason all Tythes due from Quakers have since been made recoverable before the Justices of Peace: But as to the other Defect, it stands as yet unremedied, and I must call it an intolerable one; for to leave to every Incumbent, or other Person entitled to Tythes, an Option to prosecute in the most vexatious and expensive Way, whenever he pleases, is the same with giving him a Power to oppress or persecute his Neighbour when he has a mind: When this Power is made use of against a Neighbour who is not a Quaker, it must even then be called Oppression; when it is made use of against a Neighbour who is a conscientious Quaker, it is downright Persecution; and therefore, my Lords, I must say, that I am surprised to find, that this last Defect has not been remedied long before this Time: I must say, we are extremely obliged to the People called Quakers, for making us observe a Defect in our Laws, which perhaps has occasioned, but certainly may occasion a great deal of Oppression and Persecution; and now that it has been laid before you, I cannot doubt but that your Lordships will unanimously concur in contriving some Method for remedying the same.

Anno 9. Geo. II.  
1736.

The Scope and Design of the Bill now before us, is for remedying both this last Defect in the most effectual and safe Method that can be thought of; and for obliging all Men entitled to Tythes for the future, to take that Method of recovering them, which every wise and good-natured Man has taken ever since it was established. I do not know, my Lords, but the Bill, as it stands at present, may have occasion for some Amendments; whatever Amendments it may stand in Need of, will best appear in the Committee; and considering that we shall there have the Assistance of the reverend Bench, as well as the two learned Lords whom we have now the Happiness to have among us, I am convinced we may be able to make such Amendments in the Committee as will render the Bill as effectual and perfect as the Design of it is necessary and Christian. For this reason I shall not now trouble your Lordships with any of those Amendments I may think necessary, but shall only move for the Bill's being committed.

To this it was answered in Substance as follows, *viz.*

Whether the Tythes payable to the Church be of Divine Right or no, is a Question, my Lords, which cannot any way be brought into the Dispute now before us; but as  
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there is at present among us a Set of Men who pretend to make it a Case of Conscience, that they ought not to pay Tythes, and as it has been said that the Divine Right of Tythes was once strongly insisted on, and consequently, that they ought not to be sued for in any Court but the spiritual Court, I may, I think, suppose a Set of Men who made it a Case of Conscience not to sue for their Tythes in any Courts but the Ecclesiastical : Now, if there were any such Set of Men among us, I should be glad to know how we should manage between the tender Conscience of the Quakers of one Side, and the tender Conscience of these Divine-right-men on the other ; for I must think, that it would be as great Persecution to take from a Man all Means of recovering his Property, except that which he pretended he could not in Conscience make use of, as it would be, to leave to a Man a Freedom of suing in that way which he might think most effectual for recovering his Property from another, who pretended that he could not in Conscience part with it till compelled by due Course of Law. I do not know, but some of those who are now for shewing so great a Regard to the tender Conscience of the Quakers, would be very apt to call the pretended Conscience of these Divine-right-men a most ridiculous Obstinacy : They would probably say, that if these Men had a mind to remain so obstinate as not to sue for their Property in that Method which the Law prescribed, they deserved to lose it ; and indeed I should be very apt to join in the same Opinion.

I am for Liberty of Conscience as much as any Lord in this House ; I shall always be against persecuting or oppressing any Man, either in his Person or Property, on account of any Dispute or Opinion in which Conscience can have a Concern ; but Conscience can have no Concern in any thing but Matters of Faith, or religious Worship : It can never be brought in Justification of an immoral Action, and much less can it be pretended in any Affair that relates only to Property. If Conscience could have any thing to do in the Case now before us, I am sure it is so far from being with Quakers, that it is directly against them. No Man will now pretend, at least in this Kingdom, that Tythes are due of Divine Right to the Church ; but no Man can doubt of their being due by Law to the Person who has got a Right to them. The Incumbent has generally, by Law, a Right to the Tythes within his Parish, he has as much a Property in them, as any Man in the Parish has to the Estate he enjoys ; and if a Quaker be in Possession of that, which is by Law the Property of the Incumbent, he is certainly, in Conscience, bound to deliver it to the right Owner ; and if he refuses, the Proprietor ought

ought to be left at Liberty to sue for his Property so withheld, not only in that Manner which may be most effectual for recovering it upon that Occasion, but in that Manner which may be most effectual for preventing his being put to the like Trouble on any other; for it must always be a Trouble to a Man to be obliged to sue for his Property; and we know that, upon such Occasions, besides the Trouble, a Man is generally put to a greater Expence than he recovers by any Costs of Suit that can be given him. This, my Lords, is so true, that most Men chuse rather to give up a small Demand, than to be at the Pains and the Expence of suing for it; and this is so well known to those from whom such Demands are due, that nothing but the great Expence they may be put to prevent their standing the Suit; which Terror would be entirely removed from the Quakers, if this Bill should pass into a Law; from whence we may conclude, that no one of them would then pay the least Tythe without a Law-suit; and what a terrible Thing would it be, to oblige every Incumbent in *England* to dance after the Justices of the Peace, and perhaps to the next Assizes, for every little Claim of Tythe he might have upon the Quakers within his Parish? Nay, I do not know but this Privilege of vexing and perplexing the Incumbent with Impunity, in order to make him give up his just Demand, would make most of his Parish turn Quakers; for though a proper Indulgence ought to be granted to Dissenters of all Denominations, yet it is certainly dangerous, and inconsistent with all the Maxims of true Polity, to grant to any of them a Privilege or Advantage which is not enjoyed by those of the established Church.

As all Pretences to a divine Right, with respect to Tythes; are now given up, as no Man ever pretends to demand them, or to sue for them, by virtue of any divine Right, they are to be looked on as a Tax or a Rent, due to those who have got or purchased the Right to them; and for a Man to pretend, that his Conscience will not allow him to pay a Tax or a Rent which is established by the Laws of his Country, is, in my Opinion, a most ridiculous Pretence; but it is still more ridiculous for a Man to pretend, that his Conscience will not allow him to pay such a Tax, and yet apply to Parliament for a new Method, or for any Method of compelling him to pay such a Tax. It is a sort of juggle, a sort of playing with Conscience, which ought not to be countenanced by the Legislative Power of any Kingdom. The Scruples of a tender Conscience will always, I hope, be greatly regarded by this House, when they are founded upon any

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thing of a religious Nature ; but to with-hold from a Man his Property, to refuse paying a Tax or a Rent established by the Laws of the Kingdom, and to pretend a Scruple of Conscience for so doing, is what can have no Foundation in Religion. If the Nonjurors should pretend, they could not in Conscience pay Taxes to this Government, they might perhaps be as sincere in that Scruple of Conscience, as the Quakers are in the Scruple of Conscience they pretend, with respect to the Payment of Tythes ; and as Governments have been said to be *Jure divino* as well as Tythes, they might claim the same Pretence for making it a Scruple of Conscience ; but such a pretended Scruple of Conscience would be so far from deserving any Countenance or Indulgence from this House, that it ought, and certainly would be looked on as seditious ; and therefore an Application from them, for an easy and cheap Method of compelling them to pay those Taxes, which they pretended they could not in Conscience pay voluntarily and freely, would certainly be treated with the utmost Contempt. Yet, in this Case, the Conscience of the Nonjurors seems to have a greater Concern than the Quakers can pretend to with respect to Tythes ; for our Taxes are exacted from every Man, as legally imposed and justly due, which no Man can admit who does not acknowledge the Government ; whereas Tythes are never pretended to be exacted as due by divine Right, they are exacted as due by the Law of the Land only, which is what no Quaker pretends to deny.

That two Country Justices are as capable of settling and ascertaining a Claim of 100 *l.* as they are one of 10 *l.* may perhaps be granted, and that two or more Gentlemen, who have the Honour to be in the Commission of Peace, may be as capable to settle and ascertain such a Claim as any twelve Tradesmen or Farmers in the County, may likewise be true ; but this Argument will operate much farther than is now designed ; for the same Argument may be made use of for taking from the King's Courts, and transferring to the Justices of the Peace the Cognizance of every Cause, where no Matter of Law or Right is concerned : which none of your Lordships would, I believe, agree to. It is no Reflexion upon the Justices of Peace in general, or upon any Justice of Peace in *England* in particular, to say, that there is more Reason to suspect them of Partiality, than there is to suspect the Judges of the supreme Courts of Equity or Law. Men are naturally partial in Cases where their Friends, their Relations, or even those of their intimate Acquaintance, are concerned : This is a Weakness incident to human Nature, a  
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Weakness so well known to the Legislature of this Kingdom, Anno 9. Geo. 1.<sup>st</sup>

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that we have an express Act of Parliament for preventing any Man's being a Justice of Assize in the County where he was born, or doth inhabit; for this Reason Care has always been taken by our Laws, to give a Cognizance to Justices of Peace of small Causes only; because in them it cannot be supposed that Persons are often concerned who may be related to, or acquainted with any of those Gentlemen who have the Honour to be in the Commission of the Peace; and the Solicitations, which are of late too much countenanced by some Justices, can give no great Encouragement to the Legislature to extend their Jurisdiction. We ought to consider, that every Tythe is a Rent annually becoming due; and as the Determination, with respect to the Rent of one Year, may be looked on as some sort of Precedent or Rule for determining the Value of that Rent in every succeeding Year, the Value of the Cause or Suit is to be computed from the Price that Rent might be sold for; therefore, as Tythes are generally sold for thirty Years purchase, the Value of a Suit for a Tythe of 10*l.* Value, is to be computed at 300*l.* so that if the two Justices the Incumbent applies to should deal partially, and give him but 5*l.* instead of 10*l.* the Damage they do him must be computed at 150*l.* for though he should, in the next succeeding Year, get a new Decree for 10*l.* for that succeeding Year, this new Decree may, in a great Measure repair, but does not lessen the Damage that was done him by the first; and therefore, though Tythes of any Value due by Quakers, may now be recovered before the Justices; yet I must think it would be very wrong to confine the Incumbent to that Method only.

'Tis true, my Lords, that in our supreme Courts, when the *Quantum* or Value of the Tythe demanded comes in Question, that *Quantum* or Value is generally settled and ascertained by the Verdict of a Jury; and if the Jury-men were under no Direction, nor could have any Assistance from the Court, two or more Justices might perhaps be as capable to settle and ascertain that *Quantum* or Value as a Dozen of Jury-men; but as the Jury-men always have the Assistance of the Court in the Examination of the Witnesses, and generally take the Direction of the Court, with respect to what may or may not be deemed a proper and full Proof; and as the Jury-men are seldom known, or can be solicited and influenced by either Party, I shall always think my Property more secure, when tried in a proper and legal Manner by a Jury, than when I am subjected to the arbitrary Decision of any Number of Justices of the Peace; and I believe every Man in England is of the same Opinion.



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1736.

**Opinion.** It has always been reckoned, that our Method of Trial by Jury is the great Barrier and the chief Safe-guard for the Properties of the People of *England*; and why we should, at once, deprive all the Clergy of the established Church of that Barrier and Safe-guard, with respect to a great Part of their Properties, I can see no Reason: I must confess, the very Attempt appears to me in a most extraordinary Light; especially when I consider, that we owe the Preservation of our Liberties as well as Properties, in a great Measure to the noble Stand made by them, against the Encroachments that were made upon both immediately before the Revolution; from whence they have, I think, the strongest Reasons to expect, that no Safe-guard for their Properties will be taken away by that Government, which chiefly owes its Establishment to their Behaviour, at a Time when the Properties of all but themselves were in Danger; for, by a slavish Compliance at that Time, I believe it will be granted they might have increased, instead of diminishing the Property of the Church in this Kingdom.

To alter the known Laws of the Kingdom, or the ancient Methods of proceeding in our Courts of Judicature, I shall always, my Lords, look upon as a most dangerous Experiment; and therefore I shall never give my Consent to any such Alteration, for the Sake only of a Possibility, that some ill Use may be made of the Laws as they then stand. In such Cases, I shall always think it necessary to see from the most clear and evident Proofs, that some bad Use of them has been made, that some Grievance has been generally and sensibly felt; and, as the Laws now in being, and the Methods of proceeding for the Recovery of Tythes, have been for a long Time established, I shall never give my Consent to any Alteration, and much less to such a thorough Alteration, or rather Subversion, as is proposed by the Bill now before us, without a full Proof that great Inconveniencies have arisen from the Laws and Methods of proceeding as they stand at present. This I think is absolutely necessary upon all such Occasions, but more especially in the present, where the private Property of so great and considerable a Part of our People is highly concerned: This the Quakers might easily have foreseen would be wanted; and the Question that arose about it in the other House, ought to have been a Warning to them to provide for it, in Case it should come to be wanted in this; for though the Question was carried in the other House, against the Necessity of having any such Proofs laid before them, it was not from thence to be concluded, that this House would be of the same Opinion: In a Case of such a high Nature, it was ridiculous to imagine that we would admit

admit of any parol Evidence; for if we had, it is certain we could from such Evidence have heard only the Tattles and Observations of Attorneys and Lawyers Clerks, we could not have made any Judgment of the Vexatiousness of the Proceedings, nor could we have judged, whether the Delays and Expences had been owing to the persecuting Spirit, as it is called, of the Plaintiff, or to the Litigiousness of the Defendant; of this we can form no Judgment but from authentic Records; and therefore those who intended or expected the Bill should pass, ought to have had them prepared and ready to lay before us.

I must take Notice, my Lords, that the Bill for regulating the Quartering of Soldiers at the Time of Elections, was not an Alteration of any of our known Laws, nor of any of our ancient Forms of Proceeding; on the contrary, it was not so much as a new Law: It was only a declaratory Act, for declaring and enforcing that which was before the Law of the Land; and therefore there was no Necessity or Occasion for any Proof or indeed for any Surmise, that a Breach had been made of that which was before the common Law of the Kingdom. But with respect to the Repeal of the Act *de Hæretico comburendo*, or of that for the Burning of Witches, I am surprised to hear the Repeal of either mentioned upon this Occasion; for surely it is neither so ridiculous nor so cruel, for a Clergyman to sue a Quaker in the King's Courts, or even in the ecclesiastical Courts for his Tythes, as it would be to burn a Quaker for a Heretic, or an old Woman for dealing with the Devil. These were two Laws which never could be used without being abused; nor could the private Property of any Man in the Kingdom be injured by the Repeal of either of them: Whereas the Method of suing for the Recovery of Tythes in the King's Courts, or even in the ecclesiastical Courts, may not only be used without being abused, but often becomes necessary, because the Tythes so sued for, cannot be recovered in any other Way; and the Repeal of those Laws, by which those Methods of suing are established, is a Repeal by which the Property of a very great Number of our most useful Subjects may be injured.

To imagine, my Lords, that we can contrive and prescribe an effectual Method for recovering any sort of Property, which cannot possibly be oppressively and vexatiously used, is an Imagination in which, I am afraid, we shall always find ourselves disappointed. We may indeed take away all effectual Methods, and leave it entirely to the Justice and good Will of the Debtor, whether he will pay what he owes, or of the Person who has got the Possession of another's Property, whether he will restore or no, which seems to be  
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1736. **Anno 9. Geo. II.** the Intention of the Bill now under our Consideration ; but

it is impossible to prescribe by Law an effectual Method, which may not sometimes be vexatiously or even oppressively used : It is the Business of the Courts of Judicature to prevent Oppression and Vexation as much as they can, and they do always punish it when discovered, by loading the oppressive or vexatious Party with Costs. When the Costs of any Suit run high, we are not always to ascribe it to the Oppression or Vexation of the Plaintiff ; on the contrary, the Costs of Suit are generally enhanced by the Obstinacy and Litigiousness of the Defendant. There is no Suit can be commenced for settling the *Quantum* or Value only of Tythes, where the Costs can amount to a very great Sum, unless they are enhanced by the Litigiousness of the Defendant ; and in Suits for Tythes, as well as in all Suits for other Demands, the Defendant may prevent his being loaded with any future Costs, by consigning what is due ; for if the Plaintiff can prove no greater Sum due than what was so consigned, he can recover none of those Costs he has put himself to by his own Litigiousness. It is generally, therefore, the Perverseness or the Neglect of the Defendant, that enhances the Costs of Suit ; and, notwithstanding all the Clamours raised about the excessive Costs Quakers have been loaded with, I believe, if we were to examine the Records, we should find most of these excessive Costs owing to the same Cause.

As the Laws stand at present, the Incumbent has several Ways for recovering his Property. He may sue in the ecclesiastical Court, or he may recover by filing a Bill in the *Exchequer*, or he may bring his Action upon the Statute, or lastly, he may bring his Complaint before the Justices of Peace, if his Claim be under 40*s.* or for any Sum due by a Quaker : Now to take from him all these Remedies but the last, which is the most ineffectual, I take to be such an Encroachment upon his Property, that I cannot agree to it without some other and stronger Reason, than the meer Possibility that he may make a bad Use of the other Remedies provided for him by Law ; especially considering that it seems to me evident, that no bad Use has been hitherto made of those other Remedies ; for, if we consider the Multitude of Quakers that are in this Kingdom, the Obstinacy wherewith they refuse to make any voluntary Payment of Tythe, and the natural Partiality which every Justice of the Peace must have against Tythes, it is surprising to me that so few Instances can be brought in a Course of forty Years, of any Suit in the ecclesiastical or superior Courts for those Tythes, which might have been recovered before the Justices of Peace ; and if we were to examine into the Reasons for bringing any such

such Suits into the ecclesiastical Courts, we should probably find they no way proceeded from a Spirit of Persecution, but from an Impossibility of recovering before the Justices; or perhaps from the preceding Behaviour of the Quaker; for if an Incumbent should endeavour to recover his Tythe from a Quaker, by a Complaint to the Justices of Peace, and should there, by the Solicitation and Management of the Quaker, meet with Injustice and Partiality, he might probably, for that Time, acquiesce in the partial Determination of the Justices, but it would be a good Reason for him to prosecute the next Claim he might have upon that Quaker, in the ecclesiastical, or in some of his Majesty's Courts in *Westminster-hall*.

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This, my Lords, the Quakers know the Incumbent may do, as the Laws stand at present, and this prevents their making Use of any Solicitation or other unfair Means for influencing the Determination of the Justices of the Peace in the Country; but if you take away this Option from the Incumbent, if you leave him no other Remedy for recovering his Right but a Complaint to the next Justices, and never allow him to enter the King's Courts, till he has passed this new Turnpike of the Law, we may then expect that the Quakers will use all possible Means, both with the Justices and the Witness, for defeating, or at least diminishing, the most just Demand that can be set up by the Incumbent; and considering that both his Judges and his Witnesses must always be Persons who are themselves liable to Tythes, it is I am afraid too much to be apprehended, that the Judges, the Witnesses, and the Defendant, will combine together in bringing the Complainant's Demand as low as common Decency will admit of: Nor can this Partiality be remedied or redressed by the Judges of Assize; for the Witnesses will there support and confirm what they have before sworn to before the Justices of Peace; and the Judges of Assize will often find the Evidence so contradictory, that they will be at a great Loss how to determine, or which Side to believe, being deprived of that Method of trying the Facts in Question by the Verdict of a Jury, which is the Method our Courts of Equity always have recourse to, when they find Witnesses swearing in flat Contradiction to one another.

I shall always be, my Lords, for lessening the Expences of Law-suits as much as possible, and for making the Recovery of Property as easy and expeditious as the Nature of such Suits can admit of: For this Reason, if the Bill now before us had answered the Title, I should have readily agreed to its being committed; but it is so far from answering the Title, that it will, in my Opinion, render precarious the

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Property both of Clergymen and Quakers; and it is really one of the most incorrect and confused Bills that was ever, I believe, sent up to this House. The King's Courts, and all other Courts, are to be for ever excluded taking any Cognizance of the Value of Tythes due by Quakers, and a new Sort of Jurisdiction, with respect to them, is to be given to Justices of Peace; but the Words by which this Jurisdiction is to be given are very extraordinary, these Justices are neither to order or decree as Judges, nor are they to award as Arbiters, but they are to adjudge, and yet there are no proper Powers given them for discovering what they are to adjudge; for if the Quaker should refuse or neglect to appear, what are the Justices in that Case to adjudge? Are they to adjudge whatever may be suggested to be due by the Complainant, or are they to adjudge only what he is able to prove? If they are to adjudge according to the Suggestion of the Plaintiff, the Quakers will be in a most dangerous Situation; for they may often have a Distress brought upon their Goods for a great deal more than is due, without their being apprised of a Complaint's having ever been made against them; and if the Justices are to adjudge only according to the Proof that may be brought by the Complainant, it may often be impossible for him to prove his just Demand by any Witness, nor can he, through the Defendant's Contumacy, prove it by the Oath or Confession of the Party; yet in this Case the Adjudication made by the Justices is, by this Clause in the Bill, to be absolutely final and conclusive to all Parties: Indeed by a following Clause, there is an unlimited and full Power given to any Person, thinking himself aggrieved by any Determination of the Justices, to appeal from the same unto the Judges of Assize; and which of these Clauses is to be of the greatest Authority, I do not know, for they are certainly inconsistent with one another.

As the Incumbent has but one Tenth, and the Farmer nine Tenths of the Crop upon the Ground, the common Law, my Lords, and all our Statutes till this present Time, have most justly left the Care and the Management of the whole to the Farmer; he may remove his Crop whenever he pleases, providing he leaves upon the Ground one Tenth for the Incumbent, and the Incumbent is to carry away his Tenth in a convenient Time; but by the Bill now before us, the whole Crop must depend very much upon the Care of the Incumbent or his Tything-man; for the Farmer being a Quaker, his Conscience will not allow him, as is pretended, to set out the Tythe, and therefore he must leave his whole Crop upon the Ground, till the Incumbent or his Tything-man pleases to come and set it out for him, otherways he must

must forfeit the double Value; so that in this unsettled Climate he may often lose his whole Crop, in waiting for the Incumbent's Tything-man. But if the Quaker's Conscience should prompt him to disobey this new Law as well as the former, let us consider what Condition the Incumbent will then be in; he cannot file his Bill in the *Exchequer* for a Discovery, as he might formerly have done, he can only bring his Action for the double Value; and if he can bring no Proof of the Value of the Tythe taken away, which is often the Case, how can he recover the double Value? If he chooses to bring his Complaint before two Justices of the Peace, his Case will be the same, the Quaker will not appear to be examined; and as the Incumbent can bring no Proof of the Tythe taken away, the Justices can make no Adjudication.

I must likewise take Notice, my Lords, that this Tything-man, this new Judge, that is by this Clause to be appointed, seems to be invested with a very arbitrary sort of Power, and may not only be a Tythe-gatherer, but a Tax-gatherer, both upon the Quaker and Incumbent; for he is made liable to no Controul, nor to any Punishment, in case he should deal unjustly or unequally in setting out the Quaker's Tythe; so that he may first induce the Incumbent to give him a Fee, by promising to take special Care of his Interest in setting out the Tythe, and then he may compel the Quaker to give him another Fee, by threatening that, if he does not, he will take such a Method of setting out the Tythe, as shall be very much to his Disadvantage: Such a threatening must certainly be of great Weight with the Quaker, because if he should remove any Part of the Tythe so unequally set out by the Tything-man, he is made liable to an Action, I believe, for double the Value of the whole Tythe; and in case of such Injustice committed by the Tything-man, there is no Redress provided by this or any other Clause in the Bill. Let us consider, my Lords, that this Tything-man must generally be a Man of low Circumstances, and perhaps of as low a Character; and let us consider how apt such Men are to make use of any Power they are invested with, for raising Perquisites to themselves, especially where no Fee or proper Reward for their Service is appointed by Law; which I must take to be another Defect in the Bill; for the Tything-man ought certainly to be paid for his Trouble; and since the employing of any such Man is entirely owing to the Quaker's Scruple of Conscience, as it is called, I cannot think it reasonable, that the Incumbent should be obliged to pay for the Quaker's Scruples; yet this is the Case as the Bill stands at present; for as the Tything-man is to be appointed and be employed by the Incumbent, the Incumbent must certainly pay him for his Trouble.

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This shews, my Lords, how dangerous it is to alter the established Laws of a Country, how difficult it is to form any new Law, which may not expose some Men to great Hardships and Inconveniences. I could point out many other Imperfections in the Bill now before us: There is not any effectual Method prescribed for compelling Witnesses to appear either before the Justices of the Peace or the Judges of Assize; for as the Witnesses may often be such as have neither Goods nor Chatrels, a Distress will signify nothing, and there is no Provision made for the Imprisonment of their Persons, or for subjecting them to any other Punishment in case of Contempt: But I need not enter farther into Particulars; the Bill is not only defective in every Paragraph, but the whole Scheme of it is wrong; which, I believe, proceeded from the Method of passing it in the other House: A Bill was brought in there for the Purpose mentioned in the Title of this Bill; that Bill which was first brought in, (I think I may mention it, because it was printed) was even there acknowledged to be wrong, and therefore, in the Committee, they amended it in such a manner, as to make it, in a great Measure, a new Bill; this Hurry occasioned even that new Bill, which is the Bill we now have before us, to be extremely defective, and if we proceed in the same manner, we may probably fall into the same Error; for I think it impossible to make a proper Bill of that we have now before us, without altering the Whole, which, according to our Methods of proceeding, cannot be done in the Committee; for as the Bill would then be a new Bill, it could not be pretended that such a Bill had been twice read, then committed, and after that read a third Time, which is the Method of passing Bills constantly observed in this House.

But suppose, my Lords, it were consistent with our Forms of proceeding, yet considering that the Forms of proceeding in so many of our Courts of Judicature, and such a great part of our Law must necessarily come under our Consideration, I think it impossible to alter or amend this Bill, or rather to draw up a new Bill proper for the Purpose designed, either in the Committee, or in the short time we have now to sit; at least for my own Part I declare my Incapacity; and therefore, I hope I shall be excused from having any hand in the Affair. For these Reasons I must think, that the referring of this Bill to a Committee, will be taking up the Time of this House to no Purpose, and therefore I must be against it.

The Reply was to this Effect, *viz.*

Reply.

My Lords, as I am to declare myself in favour of the Bill now under our Consideration, from what has been said of the other Side, I think, it is incumbent upon me first to declare, that

that I have as great a Regard for the established Church, and for the Properties of the Clergy, as any Lord in this House, as any Man in the Kingdom can reasonably have; and if I thought that any thing in this Bill would in the least injure the Church, or deprive the Clergy thereof, of the smallest Part of that Property which is due to them by Law, I should be for rejecting the Bill with the utmost Contempt. We all know, my Lords, or have heard of the noble Stand made by the Clergy of our national Church, against those Schemes of arbitrary Power which were set up before, and which were the Causes of the late happy Revolution; but I cannot think that the Properties of the Clergy of our Church, were then in any greater Security, than the Properties of the rest of their Fellow-subjects: By a slavish Compliance they might, indeed, have greatly increased the Properties of another Church; but they could not so much as have preserved their own, or even their Lives, without carrying that slavish Compliance so far as to betray that Church, of which they had declared themselves Members, and abjure those Principles of Religion, which they had undertaken, which they had sworn to promote. We likewise know, how firmly attached most of them, I hope all of them, are to the present happy Establishment; and for so being, they have certainly the strongest Reasons; for they may depend on it, that this Government will always support the Church in general, and will protect every one of them in particular, so far as may be reasonable or consistent with the Government of a free People.

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At the same time, my Lords, that I declare my Attachment to, and my Regard for the Church of *England*, I must declare my Good-will and my Charity towards those People called Quakers. I have always looked upon them, as a most useful and most innocent Part of our Subjects. Their universal Charity and Humanity, their great Care of all those of their own Persuasion, their private OEconomy, Self-denial and Industry, are Virtues which deserve the Regard and the Imitation of all those of the established Church: They contribute greatly to the Riches of the Kingdom, by the Trade and Manufactures they carry on, they aspire to no Places of Honour or Profit, and they have never been, by their Profession they cannot be, concerned in any Disturbances raised against the State: For these Virtues, and for these Qualities, they must always deserve the Countenance of the Legislature; they surely deserve, at least, to be protected against all manner of Oppression or Persecution: And with respect to their Behaviour at the Revolution, or their Behaviour ever since that Time, they stand upon an equal Footing with any Set of Men in the Kingdom; but as no Virtues, no Qualifications,

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no Merit, can entitle them to injure any Man in his private Property, or to expect any Favours that may be inconsistent with the Safety of the established Church, they do not now, nor ever did, pretend to sue for any such Thing: They only desire that, That which is declared by the Laws to be the Property of another Man, may be taken from them, without loading them with heavy and ruinous Costs of Suit; because their Conscience will now allow them to admit, that it does belong to another Man, or to deliver it till compelled by some sort of Law-suit.

There is nothing, my Lords, in my Opinion, of a more tender Nature than Conscience; for if a Man begins once to take any Latitude, or use a Liberty in any one Affair, in which he may think his Conscience concerned, we generally find, that he soon after begins to take the same Latitude, the same Liberty, in other Affairs of the same Nature; and at last he throws up Conscience entirely, in every Case where it seems to interfere either with his Interest or his Pleasure; for this Reason, I shall always have a great Regard for those Men who shew a great Regard to their Conscience, even though it be in a Case, where I may think the Scruple ridiculous, where I may think that Conscience is not in the least concerned. I shall agree with the noble Lords of the other Side of the Question, that, in my Opinion, Conscience can have nothing to do but in Matters of Faith or religious Worship: It can never be brought in Justification of an immoral Action, nor can it be pretended in any Affair that relates only to Property; but I cannot see from whence I can pretend to any Title to judge for another Man, what may, or may not be a Matter of Faith or religious Worship; what may, or may not be an immoral Action; or what may, or may not relate to Property only. In either of which Cases. if another Man's Opinion differs from mine; if he thinks his Conscience concerned in doing or not doing an Action, in which I may think Conscience has no Concern, or that it is concerned upon the other Side of the Question, I think I have no Title to punish or persecute him for Conscience Sake: Nay, I think, if I should be in Danger of suffering, or should actually suffer by his Scruple of Conscience, I might endeavour to prevent my suffering, or I might insist upon Reparation, but I could have no Title to punish him, for what his Conscience prompted him to do, or not to do; on the contrary, I should think myself obliged in Charity, to endeavour to prevent his suffering, or to take my Reparation, by those Means which would be of the least Injury or Damage to my conscientious Friend. This, I think, is exactly agreeable to the Principles of Christianity, and the contrary Doctrine is that, upon which

which all manner of Persecution may be founded ; because, if Anno 9. Geo. II. I take the Liberty, or rather the Privilege to judge for another Man with respect to his Conscience, and to punish him as an obstinate Man, because he thinks himself obliged in Conscience, not to do that, in which I think Conscience can have no Concern, I may certainly, upon the same Principle, take the Privilege of punishing him for doing or not doing that, which I think he is in Conscience obliged to do or not to do ; for if I can punish a Man for having too much Conscience, I may surely punish him for having too little.

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Now, my Lords, with respect to the Case, or pretended Case of Conscience at present before us ; I should have been glad to have heard it positively asserted by some of the noble Lords who have spoke upon the other Side of the Question, That Tythes are not due by any Divine Right in the Church ; because, I believe, such a positive Declaration would have given great Satisfaction to the Quakers ; and would, I am sure, have rendered them less excusable : For my own Part, I am fully convinced, that Tythes are not due by any Divine Right either in the Church, or in any other Person political or natural ; and should be glad to hear myself contradicted, because I am now ready to argue the Point. I know that no such Thing was pretended during the first Ages of Christianity : This Divine Right was not set up till the 8th Century ; it was first set up in *France*, where the Abbots and Monks had got Possession of most of those Estates that had been appropriated for supporting the parochial Clergy ; and as those Priests were not willing to give up what they had got once into their Clutches, and were too powerful to be compelled, they first broached that Doctrine of Tythes being due by a Divine Right in the Church, in which the Government and other Priests found themselves obliged to join, because they had no other Way of providing for the parochial Clergy, who are certainly of all Priests the most useful to Society. By this means, the Doctrine was soon established, and for a whole Century after, became the Subject of almost every Sermon, not only in *France*, but in every Country of *Europe* ; so that one could hear nothing from the Pulpit but the Divine Right of Tythes, and the damnable Sin it was to deprive or defraud the Church of them. As it was at that Time dangerous to contradict or oppose the most ridiculous Doctrine that could be set up by the Priests, this, among many others, was generally received, and every landed Gentleman or Farmer paid Tythes out of every sort of Produce from his Land, every Merchant paid Tythes out of the Profits of his Trade, every Tradesman and Mechanic paid Tythes out of the Profits of his or his Servants Labour, nay, the very Soldiers paid Tythes out of their Pay.

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Pay. Thank God, my Lords, we are not now in this Kingdom obliged to render an implicit Faith to what any Set of Men may tell us, and this Doctrine, with many others, has met with the Fate it deserves; but do not let us imagine it is as yet without Advocates, or even without Believers; and as long as there is one Advocate for it in the Kingdom, the Quakers ought at least to be excused for making the contrary Doctrine an Article of their Faith, and consequently, a Matter, in which their Conscience must have a Concern.

Whether there be now in this Kingdom any Person entitled to Tythes, who thinks that they are of Divine Right, I shall not pretend to determine; but I never heard of one, who thought that he could not in his Conscience sue for them in any Court but the spiritual, when he thought he might meet with a more adequate, or a more speedy Reparation from the temporal. If there were any such conscientious Divine-right-men among us, I must say, that, notwithstanding my being convinced that the Opinion is ridiculous, I should have as great a Regard as possible for their Scruple of Conscience, and would be very far from thinking, that they ought to be persecuted or ruined, singly on that Account; but the Conscience of such a Set of Men, if there were any such, could be of no Weight against this Bill, or against a general Prohibition of bringing any Suit for Tythes into the spiritual Court, because they might sell the Estates they had in Tythes; and it would be no great Injury, either to them or the Public, to disable such Persons from holding any Estate in Tythes; whereas it would be an Injury to the Public, to disable all Quakers, or any other Set of Men, from being Farmers, and it would be an Injury to every particular Man who had been bred to that Business.

We are not now to dispute the Property of Tythes, or in whom it is lodged; though I take it, that till they are set out, the Person entitled to them has only a Right to them; he has not till then a Property in them: However, this can make no material Difference in the Case; for whoever thinks he owes any Thing to another, is as much obliged in Conscience to pay what he owes, as he that has got Possession of another's Property, is in Conscience obliged to restore that Property to the right Owner: But the Quaker does not think he owes Tythe to any Man, nor does he think that any other Man can have a Property, in any Part of the Produce of his Labour and Industry; therefore he does not think himself obliged in Conscience to pay or restore. Nay, since Tythes were at first pretended to from a Divine Right, and as such made payable by the Laws of this Kingdom, the Quaker thinks he cannot in Conscience voluntarily and freely comply with

with such Laws, because it would be at least a tacit Acknowledgment of that Doctrine upon which those Laws were founded. Anno 9. Geo. II. 1736.

I shall grant, my Lords, that a Person who, from mere Obstinacy or Litigiousness, refuses to pay till compelled by Law, deserves to be prosecuted in the most expensive manner, in order to punish him with heavy Costs, and to terrify others from being guilty of the same Obstinacy or Litigiousness; but when a Person is unable to pay what is legally due, I say it is downright Oppression, to sue for it in an expensive Way, when the Debt might be as effectually recovered on a cheap and easy Method; and if a Person refuses to pay what is legally due, because his Conscience will not allow him to pay till compelled by Law, it is downright Persecution to sue in an expensive Way, when the Debt might be as effectually, and much sooner recovered by a cheap and easy Method. It is without Doubt an Injury done to a Man, to oblige him to go to Law for the Recovery of what is justly due; but with respect to the Quaker, this Injury proceeds from a Scruple of Conscience, and therefore, the injured Person, if he be a Christian, will seek for Reparation in that Method, which may be of least Damage to the conscientious Quaker. In his Case, I ought neither to punish nor to terrify. If I punish, for what do I punish? I punish a Man for being conscientious. Is this just? If I terrify, for what End do I terrify? I terrify, in order to compel a Man to act contrary to his Conscience. Is this Christian? My Lords, no conscientious Quaker can pay Tythes without a Law-suit; and therefore the only Effect this Bill can have, will be, that fewer Quakers will from henceforth be terrified by excessive Cost to do that, which they cannot with a safe Conscience do. Is this an Effect to be dreaded? Is it not an Effect to be desired by every Man who professes himself a Christian?

It seems to be laid down as a Maxim by some Lords in this Debate, That the Quakers can have no Scruple of Conscience in paying Tythes, and upon this Maxim, most of their Arguments have been founded; but, my Lords, I lay it down as a Maxim, that they have a Scruple of Conscience, and my Maxim is certainly the most charitable: I shall not say that their Scruple is well founded, or that it has any tolerable Foundation; but we have had many People burnt in this very Kingdom, for a Scruple of Conscience much like this of the Quakers. The *Lollards*, many of them, were burnt for not paying the Tax called *Peter-pence*; yet that Tax was then due by the Laws of the Land as much as the Tythes are now: However, those poor People thought they could not in Conscience pay it, and suffered being burnt to Death, rather

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than get over that Scruple of Conscience: Surely they were in earnest; and I cannot think, that a Man who suffers himself to be ruined and imprisoned, for the Sake of any Scruple of Conscience, can be in jest. If, by some odd turn in our religious Affairs, we should begin again to light up Sacrifices in this Kingdom, and should make a Law for obliging every Man to give the Firstlings of his Flock, or so much Money yearly to his Parish-priest for that Purpose, I should not think him a very conscientious Christian, that would voluntarily and freely comply with such a Law; so that there may be Cases supposed, in which an Obedience to the Laws of the Land, in the Payment of Taxes, would really be inconsistent with a good Conscience; and therefore, in Charity, we ought to believe that the Quakers are sincere, in the Scruple of Conscience they pretend, with respect to the Payment of Tythes; for as they think that every Man who is capable, or who is moved by the Spirit, as they call it, is obliged to preach the Doctrine of Christ without Fee or Reward, they may, and they probably do think it is inconsistent with Christianity to preach for Hire, or to give Hire for preaching, as we would think it to sacrifice, or to give Money for Sacrifices. For this Reason, I am against persecuting them with heavy Costs; and for the same Reason, if there were in the Kingdom such Nonjurors as have been mentioned, as long as they did not any way disturb the Government, I should be for shewing all possible Regard to the Tenderness of their Conscience; I should be for taking the Taxes from them in the most easy and cheap Method that could be contrived: So far would I be from looking upon their Scruple of Conscience as seditious, or treating their Application with Contempt, that I should be for taking the Taxes from them in any manner they could prescribe, providing it did not injure the Government.

Suppose then, my Lords, the Quakers are sincere in this Scruple of Conscience they pretend, let us consider the Condition they are in at present, and the Condition they desire to be in, in order to see whether they are now liable to any Hardships, or if what they desire can injure the Person entitled to their Tythes. From what I have supposed it must be granted, that no conscientious Quaker can pay Tythe till it is taken from him by Law, that is, by the Sentence or Decree of some Court: As the Expences in recovering by this Sentence, and of levying the Tythe in pursuance thereof, must all come upon the Quaker, and as this Expence must recur every Year upon him, it is evident that, if this Expence were large, every conscientious Quaker liable to pay Tythes would soon be undone: For this Reason a cheap and easy Method for recovering Tythes from Quakers has been provided:

provided : The Person intitled applies to the two next Justices, Anno 9. Geo. II. the Quaker does not contest the Demand, and by the Sentence of these two Justices the Person intitled takes his Tythe without putting himself or the Quaker to any great Trouble or Expence ; and this Remedy has ever since been always made use of against Quakers by every good-natured Man in the Kingdom : But let the Tythe be ever so small, let it be but a Shilling, if the Person entitled be a Lawyer, or a cruel, avaritious, or malicious Man, he may on Account of that Shilling, which the Quaker cannot in Conscience pay voluntarily, put the Quaker to 20 *l.* perhaps 100 *l.* Charge ; because is not obliged to take the easy and cheap Method of recovering his Right before the two next Justices, but may have Recourse to an expensive Suit in the *Exchequer*, or a more expensive one in the spiritual Court ; and as these Demands for Tythe return every Year, it is plain that the Quaker must in a short Time either give up his whole Estate, or his Conscience. If the Person entitled to Tythe be a Lawyer, he will probably take this last Method for his Profit ; if he be a cruel or malicious Man, he will take it for his Pleasure ; and if he be an avaritious Man, he has from hence a most excellent handle for obliging the Quaker to give him yearly a large Contribution, in order to prevail with him to take his Remedy for Tythe before the two next Justices of the Peace. To this I shall add, that if the Person entitled to Tythe be a Clergyman, and one of a persecuting Spirit, he will probably, for the Satisfaction of that Spirit, take this last Method, to the great Scandal of our established Church. Nay, such a Man may probably, instead of taking the Quaker's Goods by Distress, take his Person in Execution, in order to compel him by Imprisonment to abjure his Religion, which would be a Method of converting, your Lordships would not surely approve of.

Your Lordships must from hence see what an infinite Series of Oppression and Persecution the Quakers are subjected to by the Laws as they stand at present ; and from this Oppression or Persecution no Quaker can free himself, but by giving up his Conscience, or giving up his Farm ; the first, I am sure, no good Man will desire, the last would be a great Injury to the Public as well as to the Quaker himself. After the Suit is once commenced, let it be in what Court it will, the Quaker cannot put a stop to the Expence by consigning the Money due, as has been mentioned by a noble Lord of the other Side : That Consignation he must look on as a voluntary Payment of Tythe, and that his Conscience will not allow him to make. But besides, he may, and probably will be sued in the ecclesiastical Court, which is a Court in which his Conscience will not so much

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as admit him to appear; it is a Court where no Man ought to be made to appear for the Recovery, or for the Defence of any temporal Right: The very Sentence they pronounce, as it is a damning Sentence, I may beg leave to call it a most damnable Sentence: To pronounce such a Sentence is most unchristian: To excommunicate a Man for the Value of perhaps 4*d.* is terrible, and to imagine it has the Effects pretended, can proceed from nothing but a Belief in that *Antichristian* Power set up by the Church of *Rome*.

Having thus laid before Lordships the Hardships the Quakers are expoted to, I shall next beg leave to explain what I take to be the Intention of this Bill, for it seems to have been very much misapprehended. By this Bill it is proposed to be enacted, that the Person entitled to Tythes, instead of suing for them in the spiritual Court, shall bring his Complaint before two Justices of the Peace in the same County; and they are empowered and enabled to examine into the Affair by the Oath of the Party, by Witnesses or otherwise, to determine, award, and adjudge what they think to be due, and to levy the same by Distress and Sale of Goods, or by Imprisonment of the Person, when sufficient Goods are not to be found; but if the Quaker appears before the Justices, and contests the Value of the Tythes in Dispute, in Case the Justices should, by Mistake or otherwise, do an Injury to either Party, there are two Remedies provided, one of which is common to the Defendant, as well as Complainant, which is, that either of them may appeal to the Judge of Assize; but the other is for the Complainant only, and is such as he cannot, I think, make the least Objection to; for he is left at Liberty to take any one of the Remedies for the Recovery of his Tythe, to which he is now entitled, and is to have all his Costs in Case he recovers more than was adjudged to him by the Justices: He may sue in the ecclesiastical Court, he may bring his Action at common Law, or he may bring his Bill in the *Exchequer* for a Discovery, in the same Manner as if this Bill had never been thought of; but if any such Action or Suit appears to be vexatious, by his not recovering any greater Value of Tythe than what was adjudged him by the Justices of the Peace, he is then most justly, I think, to pay Costs to the Defendant. Then, as the Quaker can never in Conscience set out the Tythe himself, or cause it to be set out, and as the Incumbent may chuse to have his Tythe in Kind, which he cannot possibly have at present, there is this Remedy provided, a proper Person is to be employed by the Incumbent, who is empowered to enter upon the Quaker's Ground and set out the Tythe, which the Incumbent may then remove at his Pleasure.

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By these Regulations your Lordships must see, that the Quaker will be set free from that Oppression and Persecution he is now exposed to: If this Bill passes, which I hope it will, he cannot hereafter be terrified into the making a Sacrifice of his Conscience, nor can an avaritious Incumbent oblige him to commute for such a Sacrifice, by bribing him not to prosecute in any expensive Court; and whether the Incumbent or any other Person can from these Regulations receive any Injury, will best appear by considering the Objections that have been made against them.

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I do not know, my Lords, but there may be more Reason to suspect the Justices of Partiality, than to suspect the Judges of his Majesty's Courts in *Westminster-hall*; but I do not think they can be suspected of more Partiality than the Judges of ecclesiastical Courts. However, suppose the Justices to be generally partial, what Reason can be assigned for their Partiality's being generally in favour of Quakers? There are many of them who are themselves Proprietors or Tax-men of Tythes; and as the Complainant will always have his Choice of the whole Commission of the Peace for a County, he will certainly carry his Complaint before two Justices, upon whose Candour, perhaps, upon whose Favour, he may with Confidence rely; so that if there is any Partiality to be apprehended, it may justly be suspected, that the Partiality will be oftner against than in favour of the Quaker. Then as no Complaint for Tythe is by this Bill to be determined by the Justices, if any Matter of Right be in Question, as no Complaint is to be determined by them, but only such as relate to the Tythe upon a small spot of Ground, and for one Year only, it is certain, that the Justices of Peace are, by the Laws now in being, made Judges in many Cases of greater Value than any such Complaint can be of; for, considering the vast Difference in the Produce of Lands between one Year and another, it is impossible to imagine, that one Year's Determination can be any Rule for measuring the Value of the very next Year's Produce, and much less for all succeeding Years; therefore the Value of the Complaint or Suit in which the Justices are to be made Judges, is not to be computed from the Price the Tythe might sell for, but only from what is then before the Justices, which is the Value of one Year's Produce.

I confess, my Lords, I have a very great Veneration for our Method of Trial by Jury; I have always looked upon it as one of the Safe-guards for the Lives and the Liberties, as well as the Properties of the People of this Kingdom; and therefore I shall always be for preserving that Method in all Trials where any Matter of Right, or any Matter of great Value,



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Value, comes in question; but I cannot think that Method is so absolutely necessary in Causes where a trifling Sum only comes to be in Dispute; and in the Case now before us, it would be quite useless to order a Trial upon every Occasion; because, as the Quaker refuses his Tythe only for Conscience Sake, he will never contest the Matter before the Justices, or oppose their giving Sentence for what he knows to be due by the Laws of the Kingdom: There will never be any Dispute before the Justices, but when the Incumbent and the Quaker cannot agree about the Value; and in such a Case, you may order that the two Justices shall report the Affair to the Quarter-Sessions, and that the Case in Dispute shall be there tried by a Jury. This will be but a small and an easy Amendment to the Bill; it will be very far from making it a new Bill; therefore it may be made in the Committee, and yet I believe it will be the most material Amendment the Bill will stand in need of.

The known Laws of the Kingdom, or the ancient Methods of the Courts of Judicature, ought not, I acknowledge, to be altered, but upon the most mature Deliberation: But, my Lords, our Laws are not like the Laws of the *Medes* and *Persians*, they may be altered, they ought to be altered, when Time, which is the Touch-stone of every Law, and of every Method of Proceeding, has discovered, that it stands greatly in need of an Alteration or Amendment. I must so far agree with the noble Lord as to declare, that I should not be for altering an established Law or Method of Proceeding for the Sake only of a mere Possibility, that an ill Use might be made of it; but when there appears to me a great Probability that an ill Use will be made of it, I must be of Opinion, that it is then high Time to think of an Alteration, and to contrive some Method for preventing that Inconvenience which is likely to arise. This is the Case at present, it has been discovered to us, that a considerable Number of our Fellow-Subjects are exposed by the Laws as they stand at present, to be oppressed and persecuted by others, who find a particular and private Advantage in doing so, and who cannot naturally be supposed to bear them any extraordinary Good-will: Is this a meer Possibility? Is there not the highest Probability, that, where a Man has a Power to oppress, and can find an Interest or a Satisfaction, or both, in so doing, he will make use of that Power? And when a great Number of such Men are invested with such a Power, is there any Doubt to be made, but that some of them will make use it? In the Case of such an apparent, I may say, of such a certain Evil, are we to wait till Numbers have been oppressed and ruined? And are we even then to insist upon legal

Proofs

Proofs of that Oppression? No, my Lords, it was never the Custom of this House, nor I hope ever will: We have made many Laws, we have altered many Laws, for preventing Inconveniences, without the least Proof that ever any such Inconveniences had been felt. The late Act for regulating the Quartering of Soldiers was certainly some Alteration of the Law in that Respect; and was made for preventing an Inconvenience which had really never happened. The Law for burning Witches, the Law *de Hæretico comburendo* were both repealed, as before alledg'd, without any legal Proofs. It is said they could never be used without being abused; I say the same of expensive Suits against Quakers, for Tythes that might have been recovered before the two next Justices; and I must say again, it is almost as cruel to ruin a Quaker by such expensive Suits, and thereby expose him to starve or rot in a Jail, as it would be to burn him for a Heretic, or to burn an old Woman for dealing with the Devil. The first and the second of these Cruelties, certainly proceed from the same Spirit, and we find that the Power of the Devil with respect to Witches, has generally kept Pace with the Power of Priests over Heretics.

I am convinced, my Lords, if it had been thought absolutely necessary, we might have had many Proofs of Oppressions and Persecutions in the Case now before us: Considering the Nature of Mankind, where there is such a Handle for Oppression, it is not possible to imagine, but that some of those many who might use it, have used it. I shall not pretend to find Fault with the Order your Lordships have made, but I must still think, we might have got some Information even from Lawyers Clerks; they could have told us a great many Facts, and after we had heard them, we might have given what Credit to them we pleased, and we might have formed such a Judgment upon them as we thought proper; nay, for our farther Information we might have called for those particular Records that had been mentioned: But could we expect or desire that the Quakers should have brought before us authentic Copies of a great Number of Records, and that without any particular Direction? Let us consider what a vast Expence this would have been: Let us consider there is nothing in the Preamble of the Bill that required any such Expence; and we must therefore conclude, that no prudent Man would have put himself to such an Expence. We have given them leave to produce Evidence which they told us they had not, we have restrained them from producing that Evidence they told us they had; and now we say, we cannot alter the Law without Proofs that a bad Use has been made of it as it stands

Anno 9. Geo. II. stands at present. The Method of recovering Tythes before the Justices of Peace has been found so easy and so effectual, that, as it is acknowledged of all Sides, every wise and good-natured Man has ever since chosen it : What are we then to do by this Bill ? We are to clip the Wings of the Unjust, the Malicious and the Oppressive : We are to take from them a Power to oppress, a Power to persecute, because they have made, and it is certain they always will make a bad Use of it. I am surpris'd, my Lords, to hear so many Difficulties started against such a Bill.

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But there is another Reason, my Lords, why I wish you had heard some of those Witnesses the Quakers had to bring before you : They might have given us some Account of the Costliness, and of the extraordinary Methods of proceeding before those Courts called Spiritual Courts. These are the Courts which are chiefly made use of to oppress the Quakers ; these are the Courts they principally desire to be guarded against. These Courts, 'tis true, are very antient, but yet I must look upon them as a sort of Relique of Popery ; and it must be acknowledged they are all founded upon the Canon-Law, which is a Law I must call Blasphemous, Ridiculous, and Obscene. It must be acknowledged to be Blasphemous, because the Canons of the Church, or rather of the Pope, are thereby declared to be of equal Authority with the Epistles of the Apostles : It is Ridiculous in many Instances, particularly in this, that it requires three Hundred Witnesses to condemn a Pope for any Crime, and I think above Seventy to condemn a Cardinal ; thus it allows, that a Pope or a Cardinal may be guilty of Crimes, and I believe they have always had their full Share of Wickedness ; but this Law makes it impossible to punish any of them for the most flagitious Crime a Man can be guilty of : As for its Obscenity, I do not think it decent to give in this House my Reasons for calling it so ; but it is well known it is so. I make no doubt but the Judges of his Majesty's Courts in *Westminster-hall*, think it their Business to prevent Oppression and Vexation as much as they can, as well as to punish them wherever either can be discovered ; and while those Courts are filled with such Judges as they are at present, I make no doubt of their doing their Duty ; but I cannot say so much of the Judges of our Ecclesiastical Courts ; and even in the King's Courts, it is sometimes impossible to punish apparent Vexation and Oppression, especially in the Case of Tythes ; for though an Action or Suit should be brought in either of those Courts, for Tythes which might evidently have been recovered by a Complaint to the Justices of Peace, such a Suit will be allowed, I believe, to be Oppressive and Vexatious,

Vexatious, yet it would be impossible for the Judges to pre-<sup>Anno 9. Geo. II.</sup>  
vent or punish the Vexation. 1736.

It is, my Lords, a general Rule already established by all our Laws, that no Man ought to be sued in a superior and expensive Court for a small Sum : There are proper Courts established for that purpose, and there the Plaintiff ought to take his Remedy. Therefore, according to the known Spirit of our Law, we can do no Injury to any Man entitled to Tythes, by obliging him to apply to an inferior Court, in all Cases of Tythes where no Matter of Right comes in Question ; because, where no such Matter comes in Question, the Thing in Dispute cannot be of any great Value. This cannot encourage Quakers to be more contumacious and litigious than before, because they can never in good Conscience pay without a Suit ; and I hope it will be made no Objection against the Bill, that they will not hereafter be so often forced to make a Sacrifice of their Conscience, as they have been heretofore. Then with respect to their Solicitation, in order to prevail with the Justices to give a Sentence or Decree for less than is really due, it is certain no wise Man among them will solicit any such Thing, nor will any Justice who is their Friend decree so ; because the Incumbent or Proprietor of the Tythe may, in that Case, apply to the superior Courts with safety, where he will not only recover the full Value of the Tythe, but will load the Quaker with all the Costs : This will be a sufficient Bar to such Solicitation or unjust Decree, where the Quaker appears and opposes it ; and if your Lordships think there is Danger in the Justices and the Quaker's Combining together, to fix the Incumbent by the Quaker's not appearing, you may give the Incumbent the same Liberty in this last Case as he has in the first ; which Amendment may likewise be easily made in the Committee.

With respect to the Objection, my Lords, that if the Quaker withdraws his Tythes, and afterwards refuses to appear to be examined before the Justices, it will be impossible for the Incumbent to find any Witnesses for proving the Value of the Tythes so withdrawn, the Objection is founded upon a Supposition, which is not, in my Opinion, possible to be supposed. It is impossible to suppose, that an Incumbent cannot find, in his whole Parish, Cottagers, Servants, or other Persons who do not pay Tythes, and yet can make a very good Judgment of what might have been the Produce of such a Spot of Ground, such an Apple-Tree, such a Number of Cows, such a Number of Sheep, or any Thing else that can be supposed to pay Tythe, and their Judgments given upon Oath will certainly, in such a Case of Contu-

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macy, be a good Rule for the Justices Determination ; especially considering, that in Case of Contumacy, they may and ought to take a Latitude which they would not otherwise be intitled to : Nor can the Quaker be surpris'd with a Distress upon his Goods, before he hears any Thing of the Complaint, without supposing a double Perjury ; first in the Service of the Summons for his appearing before the Justices, and next in the Service of the Notice of the Decree or Adjudication : Such a Supposition is not very charitable, with respect to the Incumbent, who must be concerned, and against such Perjuries no Man can in any Case be safe, no Law can fully provide ; there can be no Safe-guard but the severe Punishment of the Perjury as soon as detected.

Now, my Lords, with respect to the Faults or Inaccuracies found in the several Paragraphs of the Bill. I shall readily grant, that it stands in need of some Amendments ; perhaps the whole Scheme may be wrong, though I cannot be of that Opinion : But we ought to distinguish between the Subject and the Scheme of the Bill ; the former is certainly good, the latter may be altered in the Committee, without making a new Bill. If the Justices of Peace are not properly or sufficiently impowered, to hear and determine all Matters relating to Tythes, the Words for that Purpose may be altered, and more proper Words inserted, and farther Powers granted in the Committee. If the Method prescribed for compelling the Appearance of Witnesses be not thought effectual against those upon whom no Distress can be levied, a few Words may be added for Imprisoning, or otherwise Punishing their Persons ; and as for the Tything-Man to be sent by the Incumbent, a few Words may in that Case likewise be added, for obliging him to set out the Tythe in a certain short Time, and a proper Remedy may be provided for preventing his doing Injustice to, or imposing upon either Party concerned, and for obliging the Quaker to give him a certain Reward for his Service ; but even as the Bill stands at present, there is nothing in it for taking from the Farmer the Care of his own Crop, there is no Penalty upon his removing the Crop without setting out the Tythe, but what he was subject to before this Bill was thought of ; therefore I am sure no Quaker can object against it : If the Crop be taken away, and the Incumbent does not recover the full Value of his Tythe by a Complaint to the Justices, he may then file his Bill in the *Exchequer* for a Discovery ; but if he can recover the full Value before the Justices, I think it is most reasonable to put some Bar upon his going in such an expensive Way to work. Turnpikes are always set up for Amending a bad Road ; in this Sense the Necessity

city of applying first to the Justices of the Peace, may be called a new Turnpike ; the Road to justice is at present difficult, cumbersome, and expensive, and this new Turnpike is set up to make it more passable, and less expensive. I hope it will be agreed to, because I am convinced it will answer the End.

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In short, my Lords, it is hardly possible to form a Bill but what may, in passing, stand in need of some Amendments : It is absolutely impossible to contrive a new Law or Regulation, against which some Inconveniences may not be suggested. Against this Bill there are, I think, very few that can be reasonably suggested ; and the Amendments are all such as may, in my Opinion, with Ease and Regularity be made in the Committee, therefore I hope your Lordships will send it thither. The Subject of the Bill is good, the Intention is Christian ; some such Bill is certainly necessary : The very Title ought to induce your Lordships, at least, to try what you can do in the Committee : If the Reverend Bench refuse their Assistance, if the two noble Lords, we have now the Happiness to have among us, refuse being concerned, it will be a great Misfortune ; but still we shall have the Assistance of the learned Judges, and with such an Assistance, I hope we shall be able to make it a perfect and an useful Bill. The passing of such a Bill will become the Dignity of this House, will become your Lordships, as the Lawgivers of a brave and a free People, will become you as the Protectors of Liberty, and as Encouragers of that Meekness, Charity and Forbearance, which are so agreeable to the Principles, and so strongly inculcated by the Doctrines of Christianity.

Now, my Lords, is a proper Time for endeavouring to pass such a Bill : There has been a Time when all our Bishops, and perhaps all the Clergy of *England* would have joined in their Clamours, against any Attempt for preventing Persecution, or for demolishing any dangerous Power they might be possessed of ; and would even have gone the Length to threaten the Members of our Legislature, for being concerned in or countenancing any such Attempt : But we are now happy in a different Situation ; for whatever some young People may think, our Bishops are now more Christian, and much more moderate than they were in former Times ; I have seen former Times, and therefore I say so ; I have seen a noble Lord of this House taken down in very harsh Terms by a Prelate, for calling Quakers Christians : I hope I may now call 'em so, without incurring any such Reprimand : They are certainly so, and in the Course of this Bill they have shewn themselves so ; for though they were not very hand-

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Anno 9. Geo. II. <sup>1736.</sup> somely used by the Counsel against them at our Bar, they returned no such Usage: Though *they were reviled, they reviled not again*; and yet we know, that the Counsel for them were very capable to have returned the same Treatment; from whence we may judge they were instructed to the Contrary: Therefore, my Lords, as the Quakers are our Fellow-Christians, and as they are a great Body of innocent, industrious and useful Subjects, though the Bill were so defective as to take away all Hopes of making any thing of it in the Committee, yet out of Decency, and for the Sake of that Regard which we are bound to shew to the Quakers, we ought to refer it to the Consideration of a Committee.

Speakers.

The above-mentioned Motion for committing the Bill, was made by the Right Hon. the Lord Viscount *Harrington*, and supported by the Lord *Hervy*, the Lord *Carteret*, the Duke of *Argyle*, and the Earl of *Illy*: On the other Side, it was opposed by the Bishop of *Salisbury*, the Lord Chancellor, the Lord *Hardwick*, and the Lord *Lowell*: But after this Debate upon the Merits of the Bill, the following Lords spoke as follows, *viz.*

Earl of Scarborough.

The Earl of *Scarborough*. My Lords, whether any such Bill as the Bill now before us be necessary or not, seems now not to be the Question in Dispute; because it is acknowledged of all Sides, that the Bill now under our Consideration is a very imperfect and incorrect Bill, therefore, as it is so late, I shall wave giving my Opinion upon that Question. The only Question now before us is, whether we ought to commit the Bill, notwithstanding its being so incorrect and imperfect; and the two chief Reasons given for committing it seem to be, either in Hopes that we may be able to amend it in the Committee, so as to make it a Bill fit for being passed into a Law; or that we should commit it, in order to shew our Complaisance and our Tenderness for the Quakers.

As to the first of these Reasons, my Lords, I must say, I quite despair of ever being able to amend it in the Committee, so as to make it a Bill fit for being passed into a Law, since the two noble and learned Lords have both declared, that they cannot undertake it: And as to our shewing our Regard and Tenderness for the Quakers, though I am desirous to shew them as much Complaisance, nay, as much Favour, as any Lord in this House can desire to shew them, yet in Decency to our own Proceedings, I cannot agree to throw away a whole Day upon any Affair, when I foresee that it can be to no Purpose, especially considering its being so late in the Session, when all the Time we have

have will be necessarily employed about Affairs which may, Anno 9. Geo. II.  
and some of them must, be brought to Maturity, for which Reason I must be against committing the Bill. 1736.

The Lord *Batburst*. My Lords, I am for the Commitment of this Bill, for a Reason different from either of the two, mentioned by the noble Lord who spoke last, for as to the Amendment of the Bill, I agree with him, that it is not to be expected : There are so many Faults in it, that I think it impossible to amend it in the Committee, so as to make it a Bill fit for being passed into a Law.

As I have, my Lords, taken great Pains to consider every Clause of this Bill, besides admitting every small Fault and every Inaccuracy taken notice of by other Lords in the Debates, I will venture to assert to your Lordships, that there is scarcely one Clause in the Bill which can stand unamended : It is now so late, being, I think, near ten o' Clock, that I do not care to trouble your Lordships with many Particulars ; but as the Reverend Prelate, who spoke early in the Debate, shewed your Lordships very justly, how one Clause in the Bill might affect the Quakers, and render their Condition worse than it is at present, I can shew your Lordships, that by the same Clause in the Bill as it now stands, a Clergyman must, in many Cases, come off a Loser, let him take what Way he will to recover that Tythe which is justly due to him : In all Cases where the Quaker, after notice given him, removes his Crop, or any other Produce liable to pay Tythes, without setting out the Tythes, or waiting till the Tything-man comes to set it out for him, the Incumbent has only two Methods prescribed for recovering his Tythe : One is by a Complaint to the two next Justices ; in which Method it may often be impossible for him to recover the Value of the Tythe so withdrawn, for want of Proof, and therefore, in all such Cases, he must necessarily be reduced to the other Method, which is, by Action or Suit in some of the Courts in *Westminster-hall* for double the Value ; but then, in this last Method, he is to recover no Costs ; and therefore, even tho' he should be able to find Witnesses to prove near the full Value of the Tythe so withdrawn, and should recover double the Value of the Tythe so proved to have been withdrawn, yet he may, and I believe will generally come off a Loser ; for suppose the Value of the Tythe so proved to have been withdrawn, should not amount to above two Shillings, the Incumbent, in such Case, will recover only four Shillings, and in suing for this four Shillings, the necessary Costs of Suit on the Plaintiff's Side only, will generally amount to above ten Pounds ; so that, notwithstanding the Incumbent's being in-  
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titled, by this Clause, to double the Value of the Tythe withdrawn, yet in all Cases, where he cannot prove that the Value of the Tythe, so withdrawn, amounts to above ten Pounds, he must necessarily come off a Loser; from whence I must conclude, that if this Clause, as it now stands, should pass into a Law, it would be impossible for any Incumbent in *England* to recover any small Tythe from a Quaker, unless in Cases where he could prove by Witnesses the full Value of the Tythe before the two next Justices of Peace.

This, my Lords, must necessarily be a great Inconvenience, and I could point out several others, but I shall not now enter farther into this Matter: I will only tell your Lordships my Reason for being for the Commitment. I think it will be a Day well spent, even though it should make the Session continue a Day longer than is now designed, to consider whether any thing can be done in relation to the ecclesiastical Courts; for though the learned Doctor at the Bar said, that none but the Quakers ever complained of the Proceedings of those Courts, I am very sure, I have heard them complained of by all Mankind, Clergy as well as Laity, ever since I came into the World, and that a Reformation of them is much desired by every Man in the Kingdom, who has not an Interest in their present Methods of proceeding. For this Purpose, my Lords, and with a View to prepare something against another Session, in order to put the Proceedings of our ecclesiastical Courts upon a better Foot; and at the same time to consider, whether any thing can be done to satisfy the Quakers, without doing an Injury to the Clergy, I am for our giving up one Day, notwithstanding its being so late in the Session, and am therefore for committing the Bill.

Lord Hervey's  
Motion with re-  
gard to the Pro-  
ceedings against  
Quakers in eccle-  
siastical Courts.

After this the Lord *Hervey* stood up again, and spoke to the following Effect, *viz.* ‘ My Lords, though many of your Lordships seem to be of Opinion, that it would be of dangerous Consequence to take from the Clergy, and other Persons entitled to Tythes, the Privilege of suing Quakers in the King’s Courts; yet as most, who seem to be of that Opinion, have declared a Regard and a Tendernefs for the Quakers, I shall beg Leave to take a little farther Notice of that which seems to be the greatest Grievance upon the Quakers, I mean their being sued in the spiritual Courts, because I hope none of your Lordships will be against giving them Relief in that Respect; for it is certainly a great Grievance upon them; and the taking from Ecclesiastics a Power or Option of suing in ecclesiastical Courts, can be no Injury to any Ecclesiastic in the Kingdom, unless it should be called an Injury to  
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take from a Man the Power he has of doing an Injury to another. Anno 9. Geo II. 1736.

In order, my Lords, to shew that the suing of Quakers in Ecclesiastical Courts, must be a Grievance upon them, I must beg Leave to state the Case, which I shall do in as brief a manner as I can. Suppose the Incumbent has a Demand upon some Quaker in his Parish for Tythes, *Easter*-offerings, or some such customary Payment, to the amount of two or three Shillings, and that the Quaker neither disputes the Value, nor the Parson's Right to it : The Incumbent knows, that if he should demand it as a Debt due to him, the Quaker would pay it without any Contest ; or if he should sue for it before the Justices of Peace, or even in the King's Courts, the Quaker would neither oppose Judgment's being given against him, nor would he any way obstruct the executing of that Judgment upon his Goods ; by either of which Methods, the Incumbent would recover his Right, without putting himself to any great Trouble, or the Quaker to any very extraordinary Expence : But the Incumbent having a Mind to persecute the Quaker, or having perhaps a private Grudge against him, or intending to raise a Contribution upon him, sends and makes a formal Demand of so much Money for Tythe or *Easter*-offerings, because he knows the Quaker cannot in Conscience comply with such a Demand ; and upon the Quaker's first Refusal, he immediately libels him in the spiritual Court, because he knows the Quaker cannot in Conscience appear in any such Court, or obey any of their Orders or Decrees : Upon the Quaker's not appearing, he is of course excommunicated, so that, in order to prevent or relieve himself from the Consequences of Excommunication, he is obliged to apply for a Prohibition ; and in order to obtain a Prohibition, he must necessarily contest the Incumbent's Right to this Tythe, *Easter*-offering, or other customary Payment, though he be certain of being cast upon the Trial, and consequently, of being loaded with all the Expence, both in the spiritual and temporal Courts, which must amount to a very large Sum, even in the cheapest and most submissive Way the Quaker can chuse to proceed ; for the Incumbent being sure of recovering all his Costs at last, will certainly oppose the Prohibition as much as he can, and will put himself to all the Charge he can possibly find any Pretence for. Thus your Lordships must see, that a Quaker may be put to a most extraordinary Charge whenever the Incumbent pleases, and that without any Vexation or Litigiousness in him, but merely for the Sake of preserving the Testimony of a good Conscience ; and as this Hazard or Inconvenience occurs every Year, it must be granted, that the Liberty of suing

Anno 9. Geo. II. *ſuing them in ſpiritual Courts is a very great Grievance upon them.*  
 1736.

But, my Lords, let us ſee if the taking of this Liberty or Option, from all Perſons entitled to Tythes, could be any Injury to ſuch Perſons; and conſidering that no Quaker can in Conſcience appear in any ſpiritual Court, we muſt conclude, that no Man can recover his Tythe from a Quaker, by any Suit he can bring in the ſpiritual Court: He may, indeed, get the Quaker arreſted and detained in Jail, till he gives Security to appear in that Court, that is to ſay, he may make him a Priſoner for Life; for no Quaker can ever give any ſuch Security; but by no ſuch Suit can he ever recover what is due to him; ſo that by taking away this Liberty or Option of ſuing Quakers in the ſpiritual Court, we take from no Man a Method by which he can recover his Property, but only a Method, by which he may vex and injure his Neighbour, in order to compel him to act contrary to his Conſcience: For this Reaſon, I hope none of your Lordſhips will oppoſe the taking of this Liberty or Option, from all Perſons entitled to Tythes; and as this may be done in the Committee, by throwing out all the enacting Clauſes now in the Bill, and inserting a ſhort Clauſe for this Purpoſe, I hope you will therefore, upon this Account, if there were none other, agree to the committing of the Bill.

Seconded by the Duke of *Argyle*. This Propoſition was ſupported and enforced by the Duke of *Argyle*, who among other Things ſaid, That the noble Lord who ſpoke laſt had made a Propoſition, which muſt, in his Opinion, be approved by every one of their Lordſhips, who was not againſt the Subject or Intention, as well as the Scheme of the Bill.

Answered by the Lord *Hardwick*. This was answered by the Lord *Hardwick*, who among other Things, ſaid, That he would have been very glad to have joined in any Thing, for giving the Quakers as much Eaſe, with reſpect to their Tythes, as was conſiſtent with that Property which others had in them, but he deſpaired of their being able to do any thing that Seſſion; and the Propoſition the noble Lord had made, would not remedy all the Quakers complained of, nor could it, in his Opinion, be executed in the Committee; for it would be neceſſary for them, before they could draw up or agree to any ſuch Clauſe, to conſider the Methods of proceeding in moſt of the Courts in *Weſtminſter-hall*, and to alter ſome of them, which they could not pretend to do without a great deal of Deliberation. And moreover, that, in order to execute what was propoſed, it would be neceſſary for them to drop not only the whole Body of the Bill, but a great Part of the Preamble; and even the Title would require to be entirely altered; in which  
 Caſe

Cafe it could not, in any fort of Propriety, be called the same Bill that had passed in the other House, and had been twice read in that: Therefore, he continued in his former Opinion, and consequently, was against committing the Bill.

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The Question being then put upon the first Motion, for committing the Bill, it was upon a Division, carried in the Negative, by 54 Not Contents, to 35 Contents, as follows, viz.

Not Contents, *The Lord High Chancellor. The Dukes of Grafton, Beaufort, Leeds, Bedford, Athol, Ancafter, Newcastle, Manchester. The Earls of Northampton, Berkshire, Thanet, Clarendon, Shaftsbury, Litchfield, Abingdon, Scarborough, Warrington, Albemarle, Godolphin, Morton, Selkirk, Dunmore, Orkney, Oxford, Strafford, Harborough, Pomsfret, Wilmington, Malton. The Lords North, Butler of Weston, Gower, Montjoy, Mafham, Foley, Romney, Lovel, Hardwick. The Lords Bishops of London, Durham, Oxford, Lincoln, Rochester, Hereford, Litchfield and Coventry, Peterborough, Chichester, Sarum, Landaff, St. David's, Norwich, Gloucester, Bristol.*

Contents, *The Dukes of Richmond, Marlborough, Rutland, Montagu, Kent, Portland, Bridgewater, Argyle. The Earls of Pembroke, Suffolk, Warwick, Westmoreland, Winchelsea, Chesterfield, Coventry, Crawford, Loudoun, Ilay, Tankerville, Fitzwalter, Effingham. The Lord Visc. Cobham, Falmouth, Torrington, Hinton. The Lords Abergavenny, Delawar, Lovelace, Carteret, Bathurst, Cadogan, King, Hobart, Monson, Hervey.*

A Bill to prevent † Smuggling having been sent up from the Bill to prevent other House, was read a first and second time in the Smuggling. House of Lords, without any considerable Debate; but when it came before the Committee of that House, which was on Monday the 17th of May, the following Amendments were offered by the Lord Hardwick, viz.

Amendments of-  
ferred by Lord  
Hardwick.

In the Act, as it is now printed, page 517, line 29th, leave out from the Word (frequently) to the Word (in) in the 38th Line, and insert (lurk, wait or loiter in divers Parts of the Kingdom).

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† See the Proceedings of the Commons on this Bill, in *Candler's Hist. Anno 9. Geo. II. Page \* 230, \* 231, \* 232, \* 233, \* 234, \* 236, \* 237.*

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*Page 518, line 10th, before (Persons) insert (Person or) and after (Persons) leave out to the first (and) in the 9th Line of the 519th Page, and instead thereof insert (is, are, or shall be lurking, waiting, or loitering, with Intent to be aiding and assisting in the running, landing, or carrying away any prohibited or uncustomed Goods, it shall and may be lawful, to and for every such Justice or Justices, to cause all such Persons to come and be brought before him or them, and to grant his or their Warrant or Warrants, for the apprehending such Offenders, and bringing him or them before any of his Majesty's said Justices of the Peace; and if such Persons shall not give a satisfactory Account of themselves and their Callings and Employments, and thereby, or otherwise, make it appear to the Satisfaction of such Justice or Justices, that they were not so lurking, waiting or loitering, with an Intent to be aiding or assisting in carrying on any such fraudulent or unlawful Practices aforesaid, then every Person who shall not give such Account and Satisfaction to such Justice or Justices, shall be committed to the House of Correction, there to be whipped and kept to hard Labour, for any time which such Justice or Justices shall, in his or their Discretion think meet, not exceeding one Month; and that the Commissioners of the Customs or Excise, respectively, shall cause to be paid, to the Person or Persons informing of such Offender or Offenders, a Reward of 20 s. for every such Offender so taken, as aforesaid.*

*Provided always, and be it farther enacted by the Authority aforesaid, that if any such Person so brought before such Justice or Justices, shall desire Time for the making it appear, that he or they were not lurking, waiting or loitering, with Intent to be aiding or assisting in the carrying on such fraudulent or unlawful Practices, such Person or Persons shall not be punished by Whipping or other Correction; but then, and in every such Case, it shall and may be lawful, to and for every such Justice or Justices, to commit such Person or Persons to the common Jail, there to remain and continue until he or they shall give such Account of themselves, or make Proof of the Matters aforesaid, to the Satisfaction of such Justice or Justices, or until such Person or Persons shall give and find good and sufficient Security, to the Approbation and Satisfaction of such Justice or Justices, not to be guilty of any of the said Offences, or fraudulent or unlawful Practices).*

*Page 519, Line 9th, leave out (Discovery and)*

*Line 13th, leave out from (thirty six) to (if) in the 25th Line.*

*Line 31st, leave out (upon such Conviction as aforesaid).*

*Page*

Page 510. Line 40th and 41st, leave out (Justice or Justices Anno 9. Geo. II. of Assize for the County where the Fact was done, or the) 1736.

Page 520, Line 3d, leave out from (act) to (all) in the 16th Line.

Page 521, Line 21st, leave out from (by) to (and) in the 24th Line, and insert (an Act made in the 4th Year of the Reign of his late Majesty King George I. (of glorious Memory) intituled, *An Act for the farther preventing Robbery, Burglary, and other Felonies, and for the more effectual Transportation of Felons, and unlawful Exporters of Wool, and for declaring the Law upon some Points relating to Pirates: And by another Act made in the 6th Year of the Reign of his said late Majesty, intituled, An Act for the better preventing Robbery, Burglary, and other Felonies, and for the more effectual Transportation of Felons*).

Page 523, Line 20th, leave out from (notwithstanding) to (And) in the 26th Line of the 524th Page.

Fo. 527, A. Line 11th, after (Kingdom) insert (in the Execution of his Office).

Fo. 527, B. Line 43d, leave out from (Process) to the second (Or) in the 46th Line.

Upon these Amendments there was a long Debate, how- Agreed to in the ever they were all at last agreed to in the Committee, with- Committee. out any one Division; as was likewise the following other Amendment offered by the Earl of *Strafford*, viz.

Page 30th, Line 13th, leave out from (notwithstanding) to (And) in the 26th Line.

Next Day the Earl of *Warwick*, who was Chairman of the Committee, reported the Amendments to the House, and after the first Amendment above-mentioned was read a second time, a Motion was made for agreeing to it; but the Motion being objected to, a new Debate arose upon the same Subject; after which the Question was put, and the Amendment was disagreed to, upon a Division, 64 Not Contents, to 58 Contents; and the other Amendments made by the Committee, being afterwards read a second time, were every one of them, of course, disagreed to. Reported by the Earl of *Warwick*, and rejected by the House.

In both these Debates, the Arguments were in Substance as follows, viz.

My Lords, while we continue in the present Method of raising those Funds which are necessary for the Support of our Government, I am very sensible how much it concerns as to prevent that fraudulent and pernicious Practice called Smuggling, and therefore I shall always be ready to join in such Measures as I think proper and necessary for that Purpose; but at the same Time, my Lords, do not let us forget the Freedom of our Constitution, and the Liberties

The Argument for the said Amendments.

Anno 9. Geo. II. 1736. and Privileges of the People ; for Slavery would be a Price too dear, even for the most absolute Security against Smuggling : For this Reason, when any Method is proposed, or any Bill brought in, for preventing the Running of Goods, or the detecting, apprehending, and punishing Persons guilty of such Practices, we ought to consider, not only whether it will be effectual for the End proposed, but whether it be consistent with our Constitution, and the Liberties of the People.



By all those who understand any thing of our Constitution, it must be granted, that one of the great Barriers for the Liberties of the People, is, that fundamental Maxim of the Laws of this Kingdom, by which every Man is presumed innocent, till the contrary appears by some overt Act of his own ; and that Act must be such a one as is itself unlawful, and of such a Nature that no innocent Construction can be put upon it. We have, in our Laws, no such Thing as a Crime by Implication ; nor do we pretend to judge of, or to punish a Man for meer thinking. From hence it is that a wicked or malicious Intention can never with us be proved by Witnesses : Facts only are admitted to be proved, and the Judge and Jury are from those Facts to determine, with what Intention they were committed ; but no Judge or Jury can ever by our Laws suppose, much less determine, that an Action in itself innocent and indifferent, was attended with a criminal and malicious Intention. Such an Inference, my Lords, was never made in a free Country, nor under any Government but that of a tyrannical as well as arbitrary Administration.

Another Security for our Liberties is, that no Subject can be imprisoned unless some felonious and high Crime be sworn against him. If the Crime be not in itself atrocious, or if there be only a Suspicion sworn against him, the greatest Hardship he can be subjected to, is, to be imprisoned till he gives Bail for his Appearance ; and if any of our inferior Judges refuse to admit him to Bail, or refuse to accept of proper and sufficient Bail, the Subject so aggrieved may immediately apply by *Habeas Corpus*, to the King's Courts in *Westminster-hall*, the Judges of which are now, by the late happy Revolution, put above being influenced by any Authority, but that of Justice and the established Laws of their Country, or awed by any Thing but that of their own Character and Reputation, or an Impeachment in Parliament, which would certainly be the Consequence, if they refused Justice to any the least of his Majesty's Subjects. This, my Lords, with respect to private Men, is the very Foundation-Stone of all our Liberties, and if we remove it, if we but knock off a Corner,

Corner, we may very probably overturn the whole Fabric. Anno 9. Geo. H.

A third Guard for our Liberties, and the only other I shall at present take Notice of, is, that Liberty which every Subject has, not only to provide himself with Arms proper for his Defence, but to accustom himself to the Use of those Arms, and to travel with them whenever he has a Mind. This, my Lords, is not only a Defence for our Liberties, but it is the chief and the only Defence upon which we ought to depend, for the Preservation of our Country against foreign Invasions. In arbitrary Governments, we know it is the Custom and the Maxim, to disarm the People, and to prevent any Man's furnishing himself with Arms, or accustoming himself to the Use of them, but such as are retained and employed by the Government; therefore such Governments are always obliged to keep a large Body of mercenary Troops in their Pay, who may perhaps sometimes be able to defend the Country against Invasions, but they are generally able, and always ready and willing to defend their Pay-masters against the justest Resentment of the People; so that in such Countries it may be justly said the People are preserved from being plundered by foreign Enemies, for no other Reason but that their domestic Plunderers may find a more rich and plentiful Booty; and in all such Countries, we find their Laws are generally partial in favour of Tax-gatherers, and other Instruments of Power, and terribly severe upon those who shall upon any Occasion dare to oppose them, in what they may be pleased to call the Execution of their Office.

Having premised these Observations upon our Constitution, and upon the Nature of a free Government, give me leave, my Lords, to apply them to that Clause in this Bill, which subjects every Man in the Kingdom to the Danger, nay, I may say Certainty, of being committed to Prison by a single Justice of Peace without Bail or Mainprize, of being convicted and transported as a Smuggler, and if he returns before the Time limited, hanged as a Felon, without Benefit of Clergy; and all this without his having been guilty of any one overt Act, except that of travelling properly armed for his Defence, and having the Misfortune to meet with two of his Friends upon the Road, armed in the same Manner; in case any two Rogues of Informers, or perhaps real Smugglers, who are to get 150, perhaps 250 *l.* by their Perjury, shall swear that this honest Man and his two Friends were assembled and armed, in order to be aiding and assisting in the clandestine running, landing, rescuing or carrying away prohibited or uncustomed Goods. This Regulation, when stripped of that Multiplicity of Words which render obscure the

Meaning



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Meaning and Intent of every Clause of an Act of Parliament, really seems to me to be the most terrible and the most entrapping Regulation that was ever proposed in any Country, and if it passes into a Law, I am sure it will not be quite safe for any three Gentlemen in the Kingdom to be seen in Company together, if they have but walking Swords by their Sides.

It is evident, at first view, that this Regulation is repugnant to all the Maxims of free Government. The wearing of Arms is an Act not only innocent, but highly commendable, therefore no Presumption of any Crime can from thence be inferred; and for this Reason, the admitting of Witnesses to prove that any three Men were so armed, in order to assist in Smuggling, is admitting Witnesses to prove an Intention, without any one overt Act from whence that Intention can possibly be inferred, which is inconsistent with the Freedom of our Constitution, and with the whole Tenor of the Laws of this Kingdom. We may as well admit Witnesses to prove, that a Man got up in the Morning and put on his Cloaths, in order to go and assist in the running of Goods; which I am sure would be ridiculous as well as pernicious, either in this or in any other Country. But this is not all the Hardship in the present Case: Witnesses are not only to be admitted to prove a wicked Intention, without an overt Act, but they are to be greatly rewarded for giving such a Testimony; which is a most dangerous Practice, and a Practice we have lately got too much into; for, in my Opinion, no Man ought to be admitted as a Witness against any Criminal, if he be to have any Share of the Reward upon his Conviction: However, in no Case is it so dangerous as it will be in this; because when false Witnesses come to swear a Fact upon a Man, which he was innocent of, he may prove himself to have been at another Place at the Time; or he may fall upon many other Ways to make his Innocence appear, and to convict the Witnesses of Perjury, which Danger every false Witness must be in, and this, is in all other Cases, a great Guard to the Innocent; but in the present Case, I should be glad to know how it will be possible for a Man to prove he had no such Intention as is sworn against him, or to convict a false Witness of Perjury? His having occasion to travel from one place to another, and his being upon the Road thither, will be no Proof of his Innocence, or the Witness's Perjury, because every Smuggler may have, or contrive such Occasions; and as Smugglers will in this Case generally be the Informers, they may chuse a Time when concurring Circumstances fortify their Testimony: They may chuse a Time when a Ship is actually hovering at Sea; or they

they may lodge a Parcel of run Goods near the Place, where those against whom they have a mind to swear, are assembled, and after procuring those Goods to be seized, they may then go and swear that such Men were assembled at such a Place, and armed, in order to assist them in the carrying off or rescuing those run Goods.

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With respect, my Lords, to the Security of the Subject against unjust Imprisonments, and the demanding of extravagant Bail; and also with respect to the Liberty of applying to the King's Courts; these valuable Privileges are all to be taken away by this new Regulation: A Man is to be imprisoned without so much as a Pretence or Suspicion of his having being guilty of any Crime; only because a sorry Fellow perhaps has gone and swore before a Country Justice out of Malice, or for a Reward, that he intended to assist in the running of Goods; and though this Crime, even when actually committed, be in its own Nature bailable, and though by our Constitution, every Man has a Right to insist that in such Cases no extravagant Bail shall be exacted from him, yet now he is to be committed without Bail or Mainprize, there to remain till he can force the Justice and his Informer to bring him to a Tryal, which I do not see how he can do; for by this Clause, the *Habeas Corpus* Act seems in all such Cases to be repealed. Again, if the Justice should commit Iniquity, either in not admitting of a proper and full Vindication, or in delaying to bring the Person accused to a Tryal, where shall such Person apply for Relief? For by this Clause, the Liberty of applying to the King's Courts is in such Cases taken entirely away from all the King's Subjects: The King's Courts may perhaps at last compel the Prosecutor to bring him to a Tryal; but they cannot admit of the most ample and clear Vindication, nor can they in the mean time admit the Person accused to Bail, let him be of what Character and Circumstances he will: Yet this Power, which by this Clause is taken from the King's Courts, is given to the Justices of the Peace, who are removable at the Pleasure of a Minister, and may most of them be made the drudging Tools of an Administration; therefore I must think it very extraordinary and inconsistent with the Principles of the Revolution, to give such Powers to such Judges, or to give them any supreme and uncontrollable Power whatsoever; especially in Cases where the Liberty of a Subject is in immediate Danger, and even his Life brought into a consequential Danger.

From what I have said, my Lords, it appears, that if this Clause passes into a Law, the Liberty and the Life of every

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every Subject in *Britain* will be exposed to very great Perils, if he ever travels with Arms for his Defence, or appears abroad with any offensive Weapon in his Custody; therefore we may suppose that in such Circumstances no Man will ever travel with Arms, and since no Man can make use of any Arms, it is not to be supposed that any Man will be at the Expence of providing himself with such Utenfils; for which Reason I must look upon this Bill, as a Bill for disarming the whole Kingdom; and surely none of your Lordships will think, that the passing of any such Bill is consistent with the Preservation of our happy Constitution, or the Safety of our native Country. I hope no Man thinks that Smuggling, or the resisting of Custom-House Officers, is so heinous or dangerous a Crime as High-Treason. Now I would ask what any of your Lordships would think of a new Law against Treason conceived in the very Terms of this Clause? Suppose the Preamble should recite, 'That traitorous and rebellious Persons frequently appear in great Gangs, carrying Fire-Arms, and other offensive Weapons, in order to be aiding and assisting in some treasonable Practices, to the great Danger of his Majesty's Person and Government, and should therefore enact, that upon Information to be given upon Oath before any one Justice of Peace, that any Persons, to the Number of three, or more, were so assembled and armed, in order to assist in such Practices, the Justice might commit them, without Bail or Mainprize; and that upon due Proof of their being so assembled and armed, in order to assist in such Practices, and upon Conviction, they should suffer as Traitors; and farther, that the Informers should, for every Traitor so convicted, receive a Reward of Fifty Pounds.' I am very certain, that if ever I should see such a Law passed, I should look upon our Constitution to be at an End; yet we may have an Administration that would be fond of having such a Law passed, perhaps in order to guard against those treasonable Practices, which their own Conduct had made frequent; and in such a Case, would not this very Law be a good Precedent for them? Would not they have Reason to say to the Parliament, What! will you refuse to grant that Security against treasonable Practices, which your Ancestors have granted against the Practices of Smuggling?

Having thus, my Lords, shewn the Dangers that are most justly to be apprehended from the Clause as it stands at present, I shall next enquire a little into the Nature of the Evil to be remedied, in order to see, whether a less dangerous Regulation would not be sufficient to remedy that Evil. My Lords, the Evil complained of is, that great Numbers of Smugglers

Smugglers lurk about our Coasts and navigable Rivers, and conceal themselves separately, under various Pretences, in order to wait the Arrival of their smuggling Vessels; and when these Vessels arrive, they then gather themselves in such a Body, as to be too strong for the Civil Power; so that, before a proper Assistance can be procured, they get their Goods landed and carried clear off. Now there is another Clause in this Bill, which, with a very little Variation, will, in my Opinion, be an effectual Remedy for this Evil, which is that Clause, by which a Power is given to any Justice, upon a proper Information, to seize all such Persons, and commit them to the House of Correction, in case they cannot give a good Account of themselves, which will render it impossible for these Fellows to conceal themselves separately, and wait for a Ship's Arrival; they must, from the Beginning of their Waiting, appear in a Body, in which case it may perhaps be out of the Power of a neighbouring Justice to seize any of them, in order to send them to the House of Correction; but in such a Case, it will likewise be out of the Power of any Justice to seize any of them, in order to send them to Jail without Bail or Mainprize: In both Cases, the Justice must wait till he can procure a proper Assistance, which he may do generally before the Arrival of the smuggling Vessel expected; and the sending of them to the House of Correction, will as effectually prevent their being assisting for that time at least, in the landing or carrying off any Goods, as the sending them to Jail and afterwards transporting them would be. This Regulation would be consonant to the Laws of this Kingdom, and the Punishment would be, in some measure, proportioned to the Crime; because a Man who loiters idly in any Place, and cannot give a good Account of himself, deserves to be sent to the House of Correction as a Vagabond; but I must think it too severe, to make a Man guilty of Felony, or to commit him without Bail or Mainprize, only because he is seen with a Sword or Cutlafs lurking or loitering in any Place, and is not able to give such an Account of himself as may be satisfactory to a Country Justice. For this Reason, I hope your Lordships will agree to the Amendments I shall propose as follow, (as above-mentioned).

These Amendments will, in my Opinion, make the Bill as effectual as it is at present against Smuggling, and will in some measure prevent those Dangers which may accrue from it, with respect to the Freedom of our Constitution and the Liberty of the Subject. I say, my Lords, in some Measure; for neither these Amendments, nor any Amendments, then prevent its being a very dangerous Bill, and such a one as I am sorry to see necessary in this once happy Kingdom.

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Clause I have taken Notice of is a Clause absolutely repugnant to the whole Tenor of our Laws, and inconsistent with the Liberty and Happiness of the People; but there are several other Clauses which may be of dangerous Consequence both to our Trade and our Constitution, some of which I shall beg Leave to take notice of, not with a Design to amend them, or leave them out, but in order to shew that there is the greater Necessity for agreeing to the Amendments I have proposed, as well as to one other Amendment I shall hereafter propose.

The Clause for making all Persons guilty of Felony, who to the Number of two or more, shall be found armed with any offensive Weapon, and travelling within five Miles from the Sea-coasts or any navigable River, with any Horse or Cart whereon shall be laden or put more than six Pounds of run Tea, or any other run Goods above the Value of 30 *l.* *Sterling*, is a most dangerous Clause for the Subject; because it puts it in the Power of any malicious or knavish Servant, to make his Master if he travels with a Sword or Pistols, guilty of Felony whenever he has a mind, by putting seven Pounds of Tea, or thirty Guineas worth of Lace into his Master's Portmanteau, and going, at the next Town they stop at, to inform against him as a Smuggler; for which Piece of Malice or Knavery, this Servant is, by a subsequent Clause, to receive 50 *l.* Reward. Nay, I do not know but some Lord of this House may sometime hereafter be transported as a Smuggler; for seven Pounds of Tea, or thirty Guineas worth of Lace, may be packed up in very little Room, and if a malicious or knavish Servant, should put any such Parcel into his Lord's Coach-Box, or Cloak-Bag, and swear that he put it there by his Lordship's Order, with a Design to convey it to his House in Town, or his House in the Country, I do not see how the best Nobleman in the Kingdom could vindicate himself against such a clear Proof of a Fact made Felony by this Bill. The noble Lord would of course therefore be found guilty, and transported as a Smuggler; and the Servant would get 50 *l.* Reward from the Government, besides a much greater Reward perhaps from those who put him upon that Piece of Treachery, and furnished him with Goods for that very Purpose.

I know, my Lord, it may be said that no Man can be absolutely safe against Treachery and Perjury; but from all our Law-books, I defy any Man to suppose a Case where it is so easy to cook up a treacherous, yet feasible Accusation against a Man who has not been guilty of the least Imprudence; or so easy to give a false Testimony, as it will be in the Case I have now laid before you; for in all, or most other Cases, there

there must be a Confederacy and Combination between two or more Persons, in order to get a Man convicted upon a false Information; in which Case the Confederates are in Danger of being betrayed by one another; and even the Facts themselves which are falsely sworn against a Man, often furnish him with means for justifying himself and condemning his Accusers; whereas in the present Case, there is no need of any Confederacy, nor can the Person accused justify himself by any means I can think of.

The Clause for making Actions of Assault upon Officers triable in any County of *England*, may likewise, in my Opinion, be of dangerous Consequence. It is granting a Privilege to his Majesty's Officers which is very inconsistent with the Safety of his Majesty's Subjects; and it is such a Privilege as ought not, I think, to be granted even to the Crown itself, nor ever was granted, except upon very extraordinary Occasions. For when an Officer is assaulted, or pretends to have been assaulted by a Country Gentleman or Farmer, I can see no Reason why he should be at Liberty to lay his Action and bring it to Trial in any County in *England*, and every Gentleman or Farmer who may be assaulted by an Officer, confined, to try his Action in the very County where the Assault was committed. To give to every Officer of the Excise as well as Customs (for the Clause is carefully extended to both) a Privilege of making a Country Gentleman or Farmer, with all his Witnesses, dance from *Northumberland*, *Wales*, or *Cornwall*, in order to defend himself against an Action of Assault to be tried in the County of *Middlesex*, in *Kent*, or in *Essex*, where the Characters of the Plaintiff, Defendant, or either of their Witnesses, can neither be known, nor enquired into, is, in my Opinion, contrary to the whole Spirit of our Laws, and inconsistent with the Quiet and Ease of all other Subjects; for every Jack in an Office is but too apt to be insolent and saucy to those who must apply to him; and this Privilege may, I am afraid, render our Jacks of the Custom-house and Excise-offices altogether insupportable. It is a good Luck for us that no Officer of our Army can well bring an Action of Assault against any Man, at least it is as yet reckoned inconsistent with their Honour to do so; for if it had been otherwise, I should have expected that they likewise would have been included in this bountiful Clause, which establishes such a remarkable Difference between his Majesty's Officers and his Majesty's Subjects.

The Clause for admitting Officers to bail in the Case of Murder or killing of any Person who resists them, I must likewise look upon as a new Piece of special Grace and Fa-

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your granted to our Officers of the Customs and Excise. Indeed, in this Case the Officers of our Army may often come in for their Share, because they are generally called as Assistants to Custom-house Officers as well as to Executioners. But I am afraid this new Favour may make them sometimes imagine that Clubs, or even Fists, are offensive Weapons, and such as may be opposed by Powder and Ball ; therefore I must think it of dangerous Consequence to the Lives of his Majesty's Subjects ; for in such a Case I think, the Proclamation against Riots ought, at least to be read, in order that those who are only Lookers on, may have Time to retire : And I can see no Reason why Officers, in such a Case, might not have been left to the Course of the common Law, as well as Gentlemen are in a parallel Case, and a Case at least as favourable ; for if a Gentleman should kill a Highwayman, who assaults him and demands his Money, he must take his Fate at common Law, and in case the Coroner's Inquest should give a wrong Verdict against him, he must lie in Prison till his Trial ; but if an Officer kills a Man who did not perhaps assault him, or bring his Life into any Danger, and the Coroner's Inquest should bring it in, perhaps justly, wilful Murder ; yet by this Clause his Majesty's Justices of the Peace, or any other Justices, are not only empowered, but are enjoined and required, to admit such Officer to Bail ; so that by these last Words it would seem, that there is not so much as a discretionary Power left in the Judge. if there be but the least Pretence for the Officer's being within this Clause.

I have no Occasion to explain to your Lordships the great Benefits and Advantages we reap by Trade, or how necessary it is to the very Being, as well as Happiness of this Nation, therefore I shall only observe, that if we should destroy our Trade, in order to prevent Smuggling, it would indeed be an effectual Remedy, and I believe the only Remedy we shall ever find to be altogether effectual ; but it would be like a Man's giving his whole Estate to his Enemies, for fear his Friends should cheat him out of a small Part of it. Now there are in this Bill several Clauses, which will, in my Opinion, expose our Merchants and Seamen to many new Hardships, Dangers and Inconveniences. I shall take Notice only of that Clause, which gives Power to our Custom-house Officers to enter and rummage any Ship at Sea, if within what they may please to call the Limits of any Port in this Island. What may be meant by the Limits of a Port, I do not know, but I am certain it is a Term so vague and indeterminate, that it must occasion an infinite Number of Contentions, between our Custom-house Officers and the Commanders of our Merchant-men ; for no Master will submit to have his

his Ship rammaged and searched, when he thinks he is not by Law obliged to do so; therefore if a Custom-house Officer should judge a Ship to be within the Limits of a Port, and the Captain should judge she is not, a Dispute, and perhaps a Battle may ensue, between the Officers and the Ship's Crew: This will subject the Captain, and I believe every one on board the Ship, to an Action for a hundred Pounds Penalty, in which they will every one be cast, if the Ship should be judged in Law to have been within the Limits of any Port when the Officer demanded Admittance; whereas if it should be judged otherwise, the Officer is made liable to no Penalty for the Assault he made upon the Ship; from whence we may conclude, that our Custom-house Officers will at last pretend to search almost every Ship that comes within the four Seas, unless the Master agrees to pay them a Tax for preventing the Trouble they may give him by rummaging and searching his Ship upon the high Seas, and when he has perhaps a fair Wind for carrying him to the Port to which he is really bound: As this will be a great Hardship upon our Merchants and Sea-faring Men, I therefore wish that a League, half a League, or some other determinate Distance had been put instead of the Word Limits.

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Upon the whole, my Lords, I must think this Bill one of the most severe and dangerous Bills that was ever passed by a *British* Legislature; and yet, notwithstanding its Severity, I am afraid, it will be far from answering the End. I am afraid, that instead of preventing Smuggling, it will render desperate all those who shall hereafter embark in that pernicious Trade, which will make them more bold and enterprising than they ever were heretofore; and their common Danger will unite them closer together, which will make them more powerful and formidable. While our numerous high Duties continue, while there are such Profits to be got by Smuggling, it is in vain to expect we can entirely prevent it by the most severe Laws we can make. By such Laws we may ruin our Constitution, we may subject ourselves to arbitrary Power, but even arbitrary Power itself will not prevent it; for in *France*, where arbitrary Power has been long established, where the Punishment of every sort of Smuggling is Death or the Gallies, where they keep up a particular Sort of Army called *Les Maltotiers*, for that very Purpose, yet Smuggling is in that Kingdom almost as frequent as in *England*, and their Smugglers are much more desperate than ours; for they march in little Armies, are well armed and disciplined, and often engage in Battle with the Custom-house Officers and their Guard of *Maltotiers*. The Gentlemen of the *French* Army are indeed but seldom or ever employed in such Exploits; they consider



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consider that their proper Business is to defend their Country against open and declared Enemies; and therefore they think it below them to engage against *Banditti*, or to hunt after and guard Criminals; this low sort of Work they look on as fit only for *Maltotiers* and *Archers*, or Sheriff's Officers; and tho' they have a vast Number of such in *France*, yet with them, and with all the other Advantages they have, it has never yet been in their Power entirely to prevent Smuggling.

From all these Considerations, I could wish, my Lords, that the Bill were delayed till another Session, when we could have Time to concert proper Clauses for the End intended, and such as would not any Way injure our Constitution, or oppress our fair Traders. Such Bills ought to be drawn up and passed with the utmost Caution and maturest Deliberation; for in passing every such Bill, we are placed between two Precipices, where the least Inclination to one Side or the other may throw us headlong into a Gulph of Perdition: We may ruin our Revenue by giving too great a Latitude to Smugglers, or we may destroy our Constitution by placing too great and too arbitrary a Power in the Crown, and likewise our Trade, by subjecting our Merchants to too many Dangers and Inconveniences. But if the Bill cannot be delayed, if the Disease absolutely requires some immediate Application, I hope your Lordships will agree to the Amendments I have offered; and as it is a Bill of a very new and extraordinary Nature, I hope it will not be at first made perpetual. Let us do as we always have done in most new Regulations: Let it be made to continue for three, five, or seven Years, that we may have some Experience of its Effects, before we make it a perpetual Law; which is the last Amendment I shall take the Liberty to offer.

The Answer was to this Effect, *viz.*

Answer.

My Lords, as the immediate Preservation, as well as future Happiness of the Nation, depends upon the Support of our Government, it is the Duty of Parliament not only to grant such Funds as may be necessary for that Support, but to make those Grants effectual; for the granting of any Tax or Duty would be of very little Signification, if the Parliament did not, at the same Time, prescribe such Methods as should be effectual for raising and collecting that Tax or Duty; and if the Methods at first prescribed should fail of the expected Success, it is, for the same Reason, the Duty of Parliament to contrive and prescribe such other Methods as may be thought more effectual. The imposing of any Tax or Duty, and allowing any Man, thro' our Neglect to escape paying that Share of it which is due from him by Law, is not only a Breach of our Duty towards our King and

and Country, but a Piece of Injustice done to every particular Man in the Kingdom, who honestly and fairly contributes his Share. Yea farther, any sort of Neglect in this Particular, must be of the most fatal Consequence to our Trade, and must necessarily at last be the Ruin of every fair Trader in the Kingdom; and in our present Circumstances, it may likewise be called a sort of Breach of the public Faith; for as most of our Duties, especially in the Customs, are mortgaged, in Whole or in Part, to the Creditors of the Public, the allowing the Produce of any of those Duties to be diminished by fraudulent Practices, when it is in our Power to prevent it, is the same with taking from them a Part of that Security which was given them by Parliament, and which the Parliament is bound to make good.

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Notwithstanding all these Obligations we lie under, yet, my Lords, I shall readily agree that we ought to be extremely cautious in granting any new Powers for raising and collecting our Taxes, which may any way encroach upon the Constitution, or upon the Liberties of the People; but if we make a Phantom of every new Power, or new Penalty, that may be really necessary for that Purpose, and give a Loose to our Imaginations, by supposing that every such Power or Penalty will be made a wrong and unjust Use of, and turned towards the Oppression and Ruin of the Subject, instead of being applied to their Relief and Preservation, we shall never grant any new Power, nor continue the old; for no Power was ever granted, nor can be granted, upon which a fruitful Imagination may not form various Scenes of Horror and Destruction; nay, no Power can be granted but what may truly be made a wrong Use of; but while we have a Parliament subsisting, while we are subject to no earthly Power but what is established by, and depends upon Parliament, we have no Occasion to frighten ourselves with such Chimæras; for, thank God! our Parliaments have hitherto been able to give a Check to every wrong Use that has been made of any Power, and to bring the Offenders to condign Punishment.

With regard to the Clauses in this Bill which have been objected to, and the new Powers to be granted which have been set in such a hideous Light; before I begin to consider any of them particularly, give me Leave, my Lords, to make this general Observation, that tho' we do not pretend to punish a Man for mere thinking, nor admit a bare Intention to be proved by Witnesses, yet we often punish a Man for speaking, and admit Witnesses to prove Words as well as Facts, in order from thence to infer a malicious Intention; and, even by a late Statute, we have laid a very severe Punishment upon an Intention; for we have made it

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Transportation for any Man to assault another upon the Highway, with an Intention to rob, whereas it was before but a common Trespass: How this Intention is to be proved I shall not pretend to determine; but I suppose, if the Man who made the Assault uttered only these two Words (*Your Money*) and his uttering of such Words were proved in Court, it would be deemed a full Proof of his Intention, and that Action which in itself is but a common Trespass, would, by these two ugly Words, be made Felony and Transportation. But this is not the only Case where Words may be proved, in order to shew the Intention of the Speaker, and convict him of the Crime for which he stands indicted or accused; for we know, that in all Trials of Murder, there is nothing more common than to prove threatening Words made use of by the Person indicted, in order to shew that he had an Intention to murder; and by an Act of his late Majesty's Reign, which makes it Felony to tear or spoil any Person's Cloaths in the Streets, it is farther enacted, that whoever shall wilfully and maliciously assault any Person in the public Streets or Highways, with an Intent to tear or spoil the Cloaths of such Person, shall, upon Conviction, suffer as in the Case of Felony: In which last Case, the Intention of the Person accused, can be proved by nothing else but by some Words or Threats uttered by him before, after, or at the Time of the Assault; for if he had proceeded to an overt Act, if he had actually torn or spoiled the Person's Cloaths, he would be within the former Part of that Law, and consequently there would be no occasion for proving his Intention. Nay, even High Treason itself may be committed by Words, without any overt Act; for by an Act of Queen *Elizabeth*, who had, I believe, as great a Regard for our Constitution as ever any King or Queen had, it is declared, that whoever shall, by any Speech, maintain the Jurisdiction of the Bishop of *Rome*, shall for the first Offence be guilty of a *Præmunire*, and of High Treason for the second: And in all Crimes whatever, according to the whole Tenor of our Laws, it is the Intention only that is to be punished, which Intention must be made appear from Circumstances, and those Circumstances may consist in Words spoken, as well as overt Acts committed by the Person accused.

With this View, my Lords, let us consider that Clause in the Bill now before us, which has been principally objected to. By that Clause it is proposed to be enacted, that if three or more are assembled with Fire-Arms or other offensive Weapons, with an Intention to run any Goods or Merchandize, or to watch for Opportunities for that Purpose;

ple; or with an Intention to carry off or rescue any Goods or Merchandize, or to wound or murder any of his Majesty's Officers, a Justice of Peace, upon Information to be given upon Oath, may commit them without Bail or Mainprize; and such Persons, if convicted by due Course of Law, are to be transported as Felons. From these Words is it not plain that the Informer, as well as all the other Witnesses, must swear to some overt Acts committed, or some Words spoken, by the Persons against whom they swear, or to some other Circumstances from whence this Intention may be probably inferred? Can we suppose that any Justice would commit, or any Jury convict the Person accused, upon the Informer's barely saying he knew he had such an Intention, without giving any Account of Reasons for saying so? And if he gives such Reasons as to make every Man believe they had such an Intention, do not they deserve to be committed? Can we suppose it possible that such Reasons can be given against an innocent Man? At least I am sure it is no more possible in this Case than in any other criminal Case whatsoever. And if you think proper to make this Crime Felony, and the Punishment Transportation, it is neither inconsistent with our Constitution, nor contrary to our Laws, to have such a Person committed without Bail or Mainprize; because wherever such a Punishment is to be inflicted, no Bail can in any Case be taken; the Person accused must, in all such Cases, remain in Prison till he be acquitted by due Course of Law.

As to the Rewards which are by this Act to be given to Informers, I can see no Reason why we should be more afraid of them in this Case than in any other; for it is certain that in many criminal Cases, even where the Punishment is Death, there are Rewards given to Informers, by the Laws and Customs of this Kingdom: From such Rewards we have experienced great Benefit, with respect to the Discovering, Apprehending, and Punishing of Criminals, and we have not yet found any Danger accruing therefrom to innocent Persons, nor can any Danger be well supposed; for if two or three Rogues should combine together, in order to accuse an innocent Man, they have generally been, and always may be made to contradict themselves, or one another, in some of the Circumstances they relate; and the Evidence of one Man, especially a poor, low Fellow, which we must suppose any such Rogue to be, will never be of weight enough with a Jury, to convict a Man of any tolerable Character. In the present Case it will be the same; the Informer must give his Reasons, for saying that the Person accused had such an Intention, those Reasons must either be

Anno 9. Geo. II. Facts he saw, or Words he heard; as to both these, he  
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may be obliged to tell all the particular Circumstances, some of which the Person accused may be able to prove false, or the false Informer may probably be made to contradict himself, unless he has a better Memory than Liars usually have; even if the Informer should give but this only Reason, that the Person accused told him so: In the first place, it is not very probable a Justice or a Jury would believe him, without several concurring Circumstances; but besides, he would be obliged to give an Account when and where, and upon what occasion, the Person accused told him so; with respect to which, it would hardly be possible for him to form ~~for~~ a Story as might appear probable; and at the same ~~for~~ such a one, as the Person accused could no way contradict by proper Evidence.

With respect to the Liberty of applying to the King's Courts in *Westminster-hall*, I cannot think it is by this Bill to be taken away from any of the King's Subjects, nor can I think, that the *Habeas Corpus* Act is in any Case to be repealed: The Justice of Peace is empowered to commit without Bail or Mainprize, as he may do in capital Cases as well as this; but the Trial must be before the King's Courts either in *Westminster-hall*, or at the Assizes; and I am sure it will not be pretended, that any of the King's Courts ought, or would admit a Man to bail, who upon Conviction, is by express Statute to be transported. Indeed, if the Justice should be guilty of Error or Iniquity in the Commitment, the Court of *King's-Bench* might in that Case give Relief, and any Person to be committed under Colour of this Bill might, in my Opinion, bring his *Habeas Corpus* for that Purpose, in the same Manner as in other the like Cases; and if the Trial of any Person to be committed by this Bill, should not be brought on in the usual Time, I can find nothing in the Bill to prevent his taking the Benefit of the *Habeas Corpus* Act, and getting himself discharged in pursuance of that Act.

Having thus shewn, that no innocent Man can be in Danger, either of being committed or convicted from this Clause, any more than from any other penal Law now subsisting; I may, I think, conclude, that no innocent Man can be by this Bill frightened from travelling with Arms whenever he has a mind, and therefore it cannot, with the least Propriety, be called a Bill for disarming the People of *Great Britain*. But I must take notice, that even as the Law stands at present, if an Information were given to any Justice of the Peace, that a Man intended to be aiding and assisting  
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in some treasonable Practices, whether with Arms or without, and the Informer should give such Circumstances as ought to gain Credit from a reasonable Man, such Justice would be deficient in his Duty, if he did not examine immediately into the Affair, and commit the Person informed against, if he saw any Cause for so doing; which he might certainly do, even as the Laws stand at present, and therefore, there is no occasion for any new Law for this Purpose, nor would the passing such a Law be any Encroachment upon our Constitution; and if the Person impeached by any such Information, should upon a fair and open Trial be convicted of Treason, the Informer would expect, and would really deserve a much better Reward than any proposed by this Bill; so that promising of a Reward by Act of Parliament can be of no great Consequence in any Case, because Rogue will be as ready to perjure himself for a Reward proffered and commonly given, as he will be for a Reward expressly promised by Act of Parliament.

Let us consider, my Lords, that by the Bill now before us, there are two sorts of Offences to be corrected, which were not before made liable to any Punishment. The first is, an assembling to the Number of three or more, armed with Firelocks, or other offensive Weapons, in order to be aiding and assisting in the Running of Goods or Deforcing of Officers; the other is, a lurking or loitering in any Place without Arms, but for the same Purposes; and as the former is an Offence much more heinous than the latter, therefore it is by this Bill to be subjected to a much higher Punishment; which Punishment cannot, I think, be deemed too severe; for if such such Men had put their Design in Execution, if they had been actually assisting in any such Purposes, they would be guilty of Felony by the Laws as they stand at present, and I cannot think there is any Severity in extending the Punishment to the Intention, when it is proved, that a Man has armed himself and made ready for putting that Intention in Execution; for in all Crimes, it is the Intention, and not the Action, which is principally to be regarded, therefore, the Punishment intended by the Amendment would, in my Opinion, be far from being adequate; at least, if it be an adequate Punishment for this Crime, it must certainly be too severe for the other Offence, of loitering and waiting without any Arms, and without assembling in such Numbers; because any Violence committed, or intended to be committed with an armed Force, ought always to be more severely punished, than the same sort of Violence committed, or intended to be committed without any such Force.

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For my Part, my Lords, I must think that Transportation would be a very moderate Punishment for endeavouring to run Goods, without paying those Duties imposed by Law, or to rescue them after they have been legally seized, even without Arms, or without an Intention to make use of any mortal Weapon ; but when Men provide Arms for this purpose, it shews they design to murder as well as smuggle ; nay, I must really look upon it as a sort of Treason ; for it is in some manner a levying of War against the King, and we know, that a Consultation advisedly held for that Purpose, has been always reckoned, and long since declared by Statute, to be High Treason : And, farther, if we consider the Numbers of Men that have sometimes assembled together in Arms for Smuggling Purposes, we must have the same Reason to conclude, that it is a sort of Treason, in which Case we may, with a great deal of freedom, inflict a Punishment of Transportation, upon three or more's assembling together, with any such Intention ; for such a number cannot assemble together for such a Purpose, without a previous Consultation ; which is a sort of overt Act that may be proved, and has often been admitted to be proved, in order to convict a Man of High Treason. A Month's Confinement in a Correction-House, tho' attended with the severest Sort of Whipping, which it would never be, would for these Reasons be very far from being an adequate Punishment for the first Offence designed to be corrected by this Bill, and it would be still farther from being effectual for the End intended. A raw Country-Fellow, or a poor labouring Man, may for a Reward easily be drawn in, to be assisting in the Running of Goods, where no Force or Violence is intended, and may for that Purpose, be prevailed on to loiter and wait without Arms somewhere near the Sea-Coasts ; for such a Man, a Month's Confinement and Whipping may be a sufficient Admonition, he may be thereby reclaimed, and frightened from ever engaging again in such Practices ; but he must be an experienced and an hardened Rogue, who arms himself for such Purposes, and prepares to murder rather than be disappointed ; it cannot well be expected, that such a Fellow will be reclaimed by Whipping or hard Labour ; as soon as he gets loose and meets with his former Companions, he will probably return to his former Practices. These are the Fellows who give our Civil Government the greatest Disturbance ; these are the Fellows who do the greatest Injury to the Revenue, and to the fair Trader ; and these are the Fellows against whom this Bill is principally designed : As it is very difficult for the Smugglers to make up and form a Gang of such disciplined

ciplined and veteran Troops, the only Way of putting an End to such fraudulent and violent Practices, is, by breaking those Gangs as fast as they begin to form themselves, which can only be done by Death or Transportation; and as our present Government always chuses to try first the mildest Method, therefore the latter Method of breaking these Gangs is proposed by this Bill.

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I hope, my Lords, I have now shewn, That the Clause objected to, is no way inconsistent with our Constitution, nor with the Liberty or Safety of any innocent Subject; that the Punishment proposed, is so far from being too severe, that it is the mildest Punishment we can propose, if we have a mind to provide an effectual Remedy for the Evil complained of; and that the Amendment proposed would be very far from being an adequate Punishment, or an effectual Remedy against that Evil, by which we suffer the most, and against which this Bill is principally designed. These things I am myself fully convinced of, and therefore I cannot agree to the Amendment proposed to be made to this Clause, nor to any of the other Amendments which depend upon the first.

As to the other Clauses objected to, though no Amendments have been proposed in relation to any of them, yet as they are Objections against the Bill in general, I hope your Lordships will give me leave to offer some of those Reasons, why I think the Objections without any solid Foundation. The Clause for punishing those who shall be found armed, and passing within five Miles of any Sea-Coast or navigable River, with more than six Pounds of Tea, five Gallons of foreign Spirits, or thirty Pounds-worth of foreign Goods, landed without paying the Duties, is not properly a new Law, but only an Amendment of an old, which has hitherto been found ineffectual, and therefore this Amendment is proposed, in order to remedy the Defects of the former Law: The Punishment is the same in both, only the Description of the Offence in the former Statute has been found to be such, as could never be proved; and for that Reason, it is absolutely necessary to alter that Description, and to make it such as may be proved, if you intend to prevent or punish the Offence: This is, I say, absolutely necessary, and it is impossible to imagine, that a Gentleman, or any Man of an established good Character, can suffer unjustly by the Description of the Offence, even as proposed by this Clause, because a Jury will never believe one single Witness against such a Man, and it will be as difficult and dangerous for two Rogues to combine together, and contrive a feasible Accusation against an innocent Man in this Case as in any other.



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other. By the Law, as it stands at present, it is as easy for a Nobleman or a Gentleman's Servant, to put a Quantity of run Goods into his Master's Coach-Box, or Portmanteau, and then to inform against him, as it will be when this Bill, as it now stands, shall be passed into a Law; yet we have never yet heard of so much as an Attempt in this Way, though it be upwards of a Dozen of Years since the Law was passed for making it Felony and Transportation for any Man, with offensive Arms, to pass within twenty Miles of any Coast, with any Quantity of foreign Goods in his Custody, which had been landed from any Ship, without due Entry and Payment of the Duties.

The Clause which is said to establish a remarkable Difference between his Majesty's Officers and his Majesty's Subjects, is, my Lords, as necessary as the former, if you intend that any of the Officers should dare to do their Duty within some of the Counties of *England*; and this Necessity proceeds from the great Height Smuggling has lately come to, and the vast Numbers of Men now engaged some Way or other in that pernicious Trade; inasmuch, that in some of our maritime Counties, the whole People of the County are so generally engaged in it, that it is impossible to find a Jury that will upon a Trial do Justice to an Officer of the Revenue, in any Case whatsoever; therefore, unless you agree to this Clause, an Officer, in any such County, who faithfully performs the Duty of his Office, must expect to be assaulted, and beaten and bruised, every Day of his Life; because the People of the County know, that he never can recover a Verdict against them; in which Case, I must leave it to your Lordship's Consideration, whether you can expect that ever any Officer will do his Duty, in endeavouring to suppress Smuggling, or collecting his Majesty's Revenues, either of the Customs or Excise.

This Clause, therefore, my Lords, I must take to be absolutely necessary; and the other Clause, in relation to the hailing of Officers and their Assistants, who shall happen to kill a Man in their own Defence, is, I think, as necessary, and this Necessity proceeds from the same Cause with the former; for in those Counties where Smuggling is become general, the Majority of the Coroner's Inquest always consists of Smugglers; so that it has been found by Experience, that those Inquests always bring the Officer and his Assistants in guilty of Murder, even though it be made clearly appear, by the most undoubted Testimonies, that the killing happened *se defendendo*; which must be such a Discouragement to Officers of the Revenue, and to all those who assist them, that it cannot be expected they will ever venture their Lives,  
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in putting the Laws of their Country into due Execution: Anno 9. Geo. II. Therefore, in both these Cases, we are not to run any Comparison between his Majesty's Officers and any of his Majesty's Subjects, but between Officers and Smugglers; and I hope your Lordships will all agree, that the former deserve more Favour than the latter. In the last of these Cases, if the Officer be within the Terms of the Clause, if the killing happen *se defendendo*, I think it most reasonable, to order and require the Judge to admit him to Bail; but if he be not within the Clause, of which the Magistrate before whom he is brought for that Purpose, is the Judge, then that Magistrate is neither ordered nor required by any Words in this Bill, to admit him to Bail.

I shall readily grant, my Lords, that our Trade is of great Advantage to this Nation, and that we ought to take all possible Care to encourage it, and to avoid every thing that may be inconvenient to our Merchants or Seamen. But this, my Lords, is one of my chief Reasons for being for this Bill as it stands at present; for our Trade cannot be protected if our Government be not supported, and our Government cannot be supported, unless we prevent Smuggling, and all other fraudulent Practices with respect to that Revenue upon which the Support of our Government depends: Therefore the honest Merchant or Seaman must bear with those few Inconveniences which are absolutely necessary for preventing the fraudulent Tricks of the knavish one; and in the Bill now before us, I am not only convinced that there are no Regulations but what are necessary, but that there is no new Regulation that can subject any honest Merchant or Sea-faring Man whatever, to any great Inconvenience. I am sure the putting of an Officer on board any Ship that comes within the Limits of a Port, is most reasonable and necessary, and can never be inconvenient for any Ship, unless they have a mind to run some Part of the Cargo; for no Ship comes within the Limits of a Port, but with a View to trade there, or to run Goods on Shore, unless when she is forced thither by Strefs of Weather or Want of Provisions: In the first Case, I believe no Man will say that it is not necessary to put an Officer on board; and the last Case so seldom happens, that it cannot well be called an Inconvenience. As for the Term, Limits, I take it to be a Term as well understood among Merchants and Sea-faring Men, as any Term whatever: I suppose every Frith and navigable River, must be within the Limits of some Port; and with respect to our Ports upon the Ocean, I suppose the Limits of each Port extend to the Place where Ships bound for that Port usually come to an Anchor, in order to wait for a Tide or fair Wind for bringing them into Port; so that no Officer can from this Clause pretend to search

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Annog. Geo. II. 1736. search a Ship upon the high Seas, nor will any Officer dare to extort illegal Fees, or any other illegal Consideration ; be-

cause if it should be discovered, he would certainly be dismissed, which is a Risque no Man of common Sense will run, for the Sake of any small Fee he can possibly get from the Master of a Ship who has no fraudulent Practice in View.

Whether the Bill now before us will be altogether effectual, is what I shall not pretend to determine, but it will certainly render it more difficult for Smugglers to carry on their fraudulent Practices, and more safe and easy for the Officers of the Revenue to do their Duty, therefore it will be more effectual than any Law now in being ; and if it has not all the good Effect could be wished for, some new Method may be taken for answering those Cases where this Bill may appear to be deficient : But such as it is, it would, in my Opinion, be the most imprudent thing in the World to put off passing it till next Session ; for as the first Part of it contains an Indemnity for all past Crimes in the Smuggling way, if this Bill should be put off, the Smugglers would all expect the same sort of Indemnity by any Bill to be passed in the next Session ; and the Hopes of being indemnified for every Crime they could commit between this and the 27th of *April* next, would in the mean time render our present Smugglers more bold and enterprising, and would make every Man who could have any Opportunity, endeavour to defraud the Public, by some sort of smuggling Practice ; from whence we may conclude, that the Public would suffer most prodigiously by any such Delay.

With respect to making the Bill temporary, no such Clause can be made to relate to the first Part of the Bill, which indemnifies those Persons who have been guilty of Offences against the Laws made for securing the Revenues of Customs and Excise : It can only be made to relate to the last Part of the Bill, which is to enforce those Laws for the future ; and as the last Part of the Bill, and the future Security his Majesty expects may arise from thence, with regard to the Revenue, is the Consideration for those large Sums his Majesty gives up by the first Part of the Bill, it would be both unequal and unjust to make the last Part temporary, since the first must be made perpetual.

I am afraid, my Lords, any Amendment we can make, may occasion the Loss of the Bill for this Session at least, and therefore we ought to make as few as possible. I do not think there is one absolutely necessary ; but if your Lordships think otherwise, if you think it necessary to add a saving Clause for the Court of *King's Bench*, and Court of *Justiciary* in *Scotland*, with regard to the Bailing of any Person committed by virtue of this Act, I shall readily give up my

Opinion, and agree to the Amendment, but I cannot agree Anno 9. Geo. II.  
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to any of the other Amendments that have been proposed.

To this it was replied, in Substance as follows, *viz.*

My Lords, we are all fully sensible that it is the Duty of Par-  
liament to grant a Revenue sufficient for supporting the Go-  
vernment, and to contrive and prescribe such Methods for  
raising and collecting that Revenue as may be effectual ; but  
we likewise know it is the Duty of Parliament to support the  
Constitution, and to preserve the Liberties of the People.  
Therefore when it begins to appear, that the Methods pre-  
scribed by Parliament for raising the Revenues necessary for  
the Support of our Government, are not effectual for the End  
intended, nor can be made so, without endangering our Con-  
stitution, those Methods ought not to be farther pursued, but  
Methods entirely new ought to be contrived and prescribed by  
Parliament. This is, I am afraid, our Case at present  
many of the Taxes we have established, are so very high, in  
proportion to the prime Cost of the Commodities upon which  
they are laid, that we find it impossible to get them duly  
raised and collected, without giving such arbitrary Powers to  
our Government in that respect, as may very probably render  
it arbitrary in every other ; and if this be our Case, we ought  
to think rather of lowering or abolishing some of our Duties,  
and raising our public Revenues in some other Method, than  
of transporting and hanging our People, who are Criminals  
by the Temptations we have thrown in their Way. But  
whatever may be thought fit to be done in our present Cir-  
cumstances, I am glad to hear it insinuated by the noble Lords  
who are against these Amendments, that our public Creditors  
have any sort of Right or Concern in the levying of those  
Taxes which were established for their Security, and appro-  
priated to their Payment ; for if they have any Concern in  
the levying of them, they have a much greater Concern in  
the Application of them ; and therefore if it be a Breach of  
public Faith to allow the Produce of those Duties to be dimi-  
nished by fraudulent Practices, when it is in our Power to pre-  
vent it, it is certainly a greater Breach of public Faith to ap-  
ply them to any other Use but that for which they were ori-  
ginally designed ; because in both Cases, a Part of that Secu-  
rity which was given by Parliament to the Creditors of the  
Public is taken from them, but in the former Case it is only  
a Sin of Omission, whereas in the latter it is a Sin of Commis-  
sion, and is therefore the more heinous.

It is always with Regret and Sorrow, my Lords, that I  
form to myself any Apprehensions of Danger to my native  
Country, and therefore I shall always avoid it as much as  
possible ; but we have already created so many new Crimes

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and Transgressions, relating to our Revenues of Customs and Excise, and have inflicted so many new Pains and Penalties for preventing those Transgressions, that, in my Opinion, the Fears of increasing them can in no Case be called Phantoms. Our Parliaments have, it is true, been hitherto able, generally speaking, to give a Check to every wrong Use of any Power, and to bring the Offenders to condign Punishment ; and while our Parliaments continue to be independent of those who have the Exercise of Power, their Will, as well as their Ability, will continue the same ; but we know the Effect of Pains, Penalties, and Penfions. in other Countries ; we know that Parliaments, Senates or Assemblies, have, by such Means, been made subservient to the worst and most tyrannical Uses that could be made of Power ; and if this should ever unfortunately happen to be our Case, our Parliaments will neither be willing nor able to check the Abuse of any Power, or to punish the Offenders. For this Reason we ought to be extremely jealous of loading our People with Pains and Penalties, or subjecting them to a Multitude of penal Laws ; for Oppression may be easily cloaked under Colour of an Act of Parliament, and many may be hanged or transported under pretence of their having been guilty of some Action made penal by Statute, without raising any general Murmur among the People, or giving the Alarm to those who do not then think themselves in Danger of any such Prosecution ; whereas the least Act of Oppression, without any such Pretence, would raise a general Murmur, and give an universal Alarm, because every Man in the Kingdom would think himself in Danger. In this Nation no Man of common Sense would extend his Power of Oppression to any great Length till he has got a Parliament to his Mind, but when he has got such a Parliament, his Power will then be without Controul, and by subjecting Multitudes of our People who have Votes at Elections to high Pains and Penalties, or to the Danger of being prosecuted upon penal Statutes, we may render it easy for a Man to accomplish this End, which, when once accomplished, may be, by the same Methods, easily preserved as long as he pleases ; for such a Parliament will never refuse to pass any penal Statute he thinks fit to propose.

No Law can be proposed, my Lords, for the Necessity of which some Reasons may not be urged ; even the most tyrannical Laws have been made under pretence of preventing or punishing some real Abuse ; but all wise Nations have chosen to allow an Abuse to escape unpunished, rather than to make such a Law as might involve the Innocent in the same Punishment with the Guilty. In this respect we have been always so cautious, that, though the Intention be principally regarded

regarded in all Crimes, yet we have never yet made a Law for punishing in a severe manner, a bare Intention, unless when accompanied with some unlawful Action : Indeed, if a Man has committed any illegal Action, our Laws in some Cases, allow his Intention to be enquired into by Witnesses ; and Circumstances, or even Words uttered by him, may be proved, in order to heighten his Punishment ; but no Words can by any of our Laws subject a Man to such a severe Punishment as that inflicted upon Felony, unless those Words be accompanied with some sort of Action which is in itself unlawful, or pronounced in such a solemn and deliberate Manner as to imply a sort of Action ; and the Reason of this is plain, because no Subject could be safe or easy, if Words spoken by him, perhaps at random, or before but one Witness, could be picked up, and proved against him, in order to convict him of Felony ; for in such a Case a Man's Words might often be mistaken, or unfairly related by those that hear him, and no Man could guard against Perjury, nor have an Opportunity of justifying himself against a false Accusation : If ever any such Custom or Law should come to be established in this Kingdom, the Happiness and Security of our People would be at an End : We might expect, some time or other, to have Informers as numerous and frequent in our Streets, and in all our public Places, as ever the *Delatores* or Informers were about *Rome* under their most tyrannical Emperors.

The very Cases mentioned by the noble Lords who have spoke upon the other Side of the Question, evince what I have said to be the standing Maxim of the Laws of *England*. In the Case of Murder, the killing of a Man, which is in itself an unlawful Action, must be proved, and then threatening Words or other Circumstances may be proved, in order to shew that That unlawful Action was committed with an Intention to murder : In an Assault with an Intention to rob, or to tear a Person's Cloaths, it is the same ; the Assault is in itself an unlawful Action, and the Intention is allowed to be proved only to aggravate the Punishment. In Treason, a Consultation or Conspiracy to murder the King is a sort of overt Act, and the Manner how that Consultation was held must be proved ; for it would be no sufficient Proof in this Case for Informers or Witnesses to say, that they had heard the Prisoner say he intended to murder the King, or that he had had a Consultation for that Purpose : And the Statute of Queen *Elizabeth* clearly shews, how cautious we have always been, not to subject Men to any heavy Punishment on account of any Words they may unadvisedly utter ; for, before a Man can be made liable to any of the Penalties of that Statute,

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it must be proved, not only that he maintained, but that he advisedly maintained the Jurisdiction of the Bishop of Rome ; in which Case the Manner of his speaking, the Place where he spoke, and several other concomitant Circumstances must be made appear to the Court, in order to shew that what the Prisoner said was advisedly said ; and when such a Proof is laid before any Court, it cannot be called a Proof of Words only, but is likewise a Proof of several Facts which accompanied the pronouncing of those Words. So in a late Statute, where Words are made criminal, we may see how cautiously our Laws are in such Cases penned ; for it is enacted, that where any Person shall maliciously and directly, by Preaching or advised Speaking, affirm, that the pretended Prince of Wales hath any Title to the Crown, such Person shall incur a *Premunire* ; in this Case likewise the Informers or Witnesses must give an Account of the whole Circumstances attending the Words spoken, in order to shew that they were maliciously, directly, and advisedly spoken ; and as a farther Security for the Subject against false Accusations, it is by the same Act provided, that no Person shall be prosecuted for Words so spoken, unless Information be given on Oath in three Days after the Words spoken, and the Person prosecuted within three Months after the Information given : In both these Cases therefore, the Words made criminal, imply a sort of Action ; for several concomitant Facts must be proved, in order to shew that the Words were advisedly spoken.

Let us now, my Lords, compare these Cases with the Case now before us. The Words of the Bill now before us, are, That upon Information to be given upon Oath, before any one or more Justices of the Peace, that any Persons, to the Number of three or more, are, or have been assembled for any of the Purposes aforesaid, and are, or have been armed with Fire-arms or other offensive Arms or Weapons, such Justice may grant his Warrant, and upon such Person's being brought before him, may, if he, upon due Examination, finds Cause, (that is, if he thinks fit,) commit them to the next County-Jail, without Bail or Mainprize, till discharged by due Course of Law. Then come the Words for their Trial and Condemnation, which are, That such Persons, upon due Proof of their being armed and assembled, in order to be Aiding and Assisting, in the clandestine running, landing, rescuing or carrying away prohibited or uncustomed Goods, and upon Conviction thereof, shall be adjudged guilty of Felony. Do not your Lordships see, that in this Case Men are to be committed for a bare Intention, without their having deserved to be brought

brought into that Jeopardy by any one overt illegal Act Anno 9. Geo. II.  
 whatsoever? I shall grant that if the Justice understands the 1736.  
 Spirit of our Laws, and acts justly, he will examine the  
 Informer narrowly as to Circumstances, and will not com-  
 mit, unless the Informer gives good Reasons for saying, that  
 those he informed against had such an Intention; but the  
 Words of this Clause make no such Precautions necessary :  
 We are not now to enquire what the Justice ought to do,  
 but what he may do, and I will say, that, by these Words,  
 an Information upon Oath, that such Persons were assembled  
 and armed with such an Intention, without assigning any  
 Reasons, without relating any Circumstances, will be a suffi-  
 cient Authority for the Commitment, will excuse the Justice  
 from all the Penalties of false Imprisonment ; therefore if the  
 Justice has any Malice against the Persons brought before him,  
 or has a Job of his own to gain by it, or be a Tool of those  
 that have, are we not to suppose that he will commit the  
 Persons against whom he has such an Information ? And may  
 we not suppose that such Informations may be cooked up,  
 and Persons of great Credit committed, in order to carry an  
 Election for Members of Parliament ?

Then as to the Trial, my Lords, is not here a Man to be  
 tried, and brought into great Danger of being condemned,  
 and for no less a Crime than Felony, upon a bare Intention,  
 and without his having ever deserved to be brought into such  
 a Danger by any overt illegal Act whatsoever ? Can we say  
 that any Subject is safe, who may, upon malicious Informa-  
 tion, which he cannot disprove, be brought into such  
 Danger ? I say, my Lords, an Information which he can-  
 not disprove, for this will always be the Case. Suppose  
 three Gentlemen out a shooting, or travelling upon the Road  
 with Arms for their Defence : Suppose they meet a malicious  
 or an avaritious Rogue in the Fields, or upon the Highway,  
 and ask him several Questions about the Game in that  
 Neighbourhood, or about the Roads ; May not that Rogue  
 go before a Justice and inform, that they then told him they  
 were upon the Smuggling Lay, and offered him Money to  
 join with them ? I should be glad to know how these three  
 Gentlemen could disprove this Information. I could suppose  
 twenty such Cases without any very fruitful Imagination :  
 But in this Case, let us suppose farther, that some Persons at  
 a Distance saw these three Gentlemen speak to this Rogue,  
 and were brought to prove this Circumstance upon the Trial ;  
 that a Ship was then hovering upon the Coast, and some  
 run Goods found concealed the very next Day near the Place :  
 Would not these Circumstances contribute greatly to the  
 Conviction of the Gentlemen ? Nay, the Rogue himself  
 might



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might mention every one of them in his Information, in order to convince an honest Justice. My Lords, it is a most dangerous Situation for any Man to have his Estate and Liberty depending upon the Opinion a Jury may conceive of his Character, in Opposition to the Oath of another Man : And in this Case it is more dangerous than any other ; because a Man, otherwise of the best of Characters, and of opulent Circumstances, may be presumed to have had an Intention to smuggle, whereas no Jury would presume or easily believe, that such a Man could have an Intention to rob upon the Highway, or to tear People's Cloaths : Then with respect to the Informer, if he were a low, mean Fellow, no Jury would believe that any Man would attempt to rob him upon the Highway, nor would a Jury easily presume that a Man of good Circumstances would impart to him his Intention relating to any other Crime ; but in Smuggling, Men of the best Circumstances often employ mean Fellows, and therefore a Jury may the more easily presume, that such a Fellow was in that Case privy to the Design of the richest Man in the Kingdom. Thus your Lordships may see what Dangers, what undeserved Dangers, the best of the King's Subjects may be brought into by this Clause ; and here are none of those cautionary Words, none of those cautionary Proviso's, which are in any of our penal Statutes relating to Words : If a Man's Intention to smuggle is to be taken from Words spoken by him, it is not made necessary to prove that those Words were directly or advisedly spoken ; nor is there any Limitation, as to the Time when the Information is to be made, or the Prosecution commenced : An Accusation may be contrived, and Witnesses prepared to prove, that a Man had such an Intention at a certain Time ten Years before ; in which Case it will be impossible for him to remember, much more to prove, where he was, with whom he was, what he was doing, or any other Circumstance that can contribute to his Vindication.

I hope I have set this Danger in so clear a Light, that your Lordships will think it a Danger, to which the People of this Kingdom ought not to be exposed, for the sake of collecting any Duty they have now the Misfortune to labour under, even though Informers were not to be encouraged by any Reward, either promised or expected : There are many Causes, from whence false Accusations may arise, besides Rewards in Money : Private Malice, private Law-suits, Contentions about Elections of any Kind, and that which is the most dangerous of all, the Spleen of a Minister against those who oppose him strenuously in the worst of his Measures, may propagate false Informations, when it is made so easy to contrive

trive them; so as to render it impossible to convict the In-  
 former of Perjury, or to sue a Tool of a Justice for false Im-  
 prisonment; and when Men are exposed to such Dangers,  
 when Men are by Law made liable to such false and vexa-  
 tious Informations at the Suit of the Crown, you cannot  
 expect that any private Man will act boldly and strenuously,  
 in any Election for Members of Parliament, against that which  
 is now called, and may sometime hereafter be properly and  
 truly called the Court Interest: But this Danger, great as it  
 is, is greatly enhanced by the following Clauses, which  
 pledge the public Faith, and give to every Informer, who  
 shall be so cunning as to convict his Man, a Title by Act of  
 Parliament to a Reward of 50*l.* for every Man he shall so  
 convict. Such Rewards are in all Cases dangerous: We  
 have already had Instances of false Informations made for the  
 sake of the Reward, in the case of Robbery, where it is very  
 difficult to set up any such Prosecution; some have been al-  
 ready discovered, but we are not sure that all such have. If  
 there were no Difference between a Reward expected, and a  
 Reward promised, there would never be an Occasion to pro-  
 mise any such Thing; but in either Case, I say, a Reward  
 is of the most dangerous Consequence, when promised to, or  
 expected by a Man, who is to be an Evidence against the  
 Prisoner, and not to be entitled to any Reward unless the  
 Prisoner be convicted; therefore such Rewards ought neither  
 to be promised nor given, but upon very extraordinary Oc-  
 casions; and in every Case, where the Witness does but ex-  
 pect a Reward, either upon the Acquittal or Condemnation of  
 the Prisoner, it is certainly, by all the Laws in the World, a  
 good Reason for giving no Credit to his Testimony.

Whether a Man, who may be committed by virtue of  
 this Clause, will be entitled to his *Habeas Corpus*, is what I  
 shall not now enquire into, since it seems to be agreed to add a  
 saving Clause; but can it be thought that it is no Hardship  
 upon a Man to lie in Jail, till he can be relieved by the  
 Court of *King's-Bench*, which may, when he is at a great  
 Distance from *London*, be above two Months; and yet not to  
 have it any way in his Power to punish the Justice, who com-  
 mitted him without a just Cause, nor the Informer who swore  
 falsely against him? therefore, I hope your Lordships will not  
 think that a saving Clause, with respect to Bail, will be suffi-  
 cient to guard the Subject, against the Injuries that may be  
 done them, by Means of this Clause, should it pass into a  
 Law.

From what I have said, my Lords, I think it is now evi-  
 dent, that if this Bill passes into a Law, it will be dangerous  
 for any Man in the Kingdom to travel with Arms; and  
 therefore

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Annog. Geo. II. therefore it may, as was said in the Beginning of the Debate,  
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be justly called a Bill for disarming the People of *Great Britain*, in order to preserve their Liberties, and make them pay their Taxes. I hope it never will, but it certainly may, be made a Precedent for such another Bill, with regard to treasonable Practices; and here I must take Notice, that if an Information were given upon Oath to a Justice, that a Man had armed himself, in order to assist in treasonable Practices, it would be the Duty of a Justice, to enquire into the Affair; but unless it appeared by the Oath of some Person or other, that that Man had actually committed, or was suspected to have actually committed, some sort of treasonable Practice, the Justice could not commit him; for by our Laws, as they stand at present, there is no such Thing as swearing the Peace in Cases of High Treason; and therefore upon great and dangerous Emergencies, there is always a temporary Law passed, for enabling his Majesty to secure those Persons he shall suspect to be conspiring against him.

With regard to the Offences intended to be corrected by this Bill, I must think that the Punishment inflicted upon the first is severe enough for the last: I shall grant that a Man who is convicted of having actually have been aiding or assisting in the running or rescuing any prohibited or uncustomed Goods, and was armed for that Purpose, deserves to be made guilty of Felony and transported; but I cannot think the Intention to smuggle with an armed Force, ought to be subjected to the same Punishment with the Crime itself, especially when that Intention is not manifested by any one illegal Act. An Intention to commit Felony, is seldom or ever equally punished with the Crime itself; even in the late Act against Robbery, an Assault with Intention to rob, is not made liable to the same Punishment, as if the Robbery had been actually committed, tho' the Intention be manifested by an overt illegal Act. And tho' the Smugglers may perhaps be as loth to part with a disciplin'd Gang, as we are to part with a disciplined Regiment; yet I shall never be for declaring any one of my Countrymen guilty of Felony, upon a Suspicion, or even the clearest Proof, that he intended only to be one of that Gang, but had never engaged in any Action, so far as was made appear to me; I think it is time enough to do this, when he is proved to be a Veteran, by having been at least once in Action; and as the sending them for a Month to a Correction-house, will prevent their executing their Intention at least for that Time, and as this may be repeated by the Diligence of the Officers and Magistrates, as often as they form any such new Intention, I hope it will be in a great measure effectual; therefore, I am for making it the only Punishment

Punishment ; for tho' I am against Smuggling as much as Anno 9. Geo. II.  
 any Lord in this House, yet I have such a tender Regard for  
 my Countrymen, that I cannot agree to subject the Innocent  
 to great and unavoidable Dangers for the sake of punishing  
 the Guilty.

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Now, my Lords, with regard to the other Clauses objected to, give me leave to make some Observations upon the Excuses that have been made for them. As to the Clause for making Smugglers of all those who shall be found passing with more than six Pounds of Tea, five Gallons of Spirits, or 30 *l.* worth of any other foreign Goods, without a Permit, or without having paid the Duty ; if it be designed only as an Amendment of a former Law, it clearly shews how fast we improve in rendering our Laws severe, arbitrary, and dangerous. The Law here referred to is, I suppose, that which was passed in the 8th of his late Majesty's Reign, by which it is, among other Things enacted, That all Persons passing, knowingly and wittingly, with any foreign Goods, landed from any Ship, without due Entry, and Payment of the Duties, in their Custody, within 20 Miles of our Coasts, and shall be more than five in Company, or shall carry any offensive Arms, or wear any Vizard, or other Disguise, when passing with such Goods ; or shall forcibly hinder the Officers in seizing them, shall be guilty of Felony, and be transported : This Law is, and was at the Time of passing, deemed a severe Law ; but let us examine the Provisions here made, for the Security of the innocent Subject : It must be proved, that the Person accused, was passing with such Goods, knowingly and wittingly, that is, it must be proved, not only that the Goods taken in his Custody were run Goods, but that he knew them to be run Goods, and it must be expressly proved that the Goods were in his Custody : It must be proved, I say, that the Goods taken in his Custody, were actually run from some Ship, without due Entry and Payment of the Duties ; and it must be proved, that they were seized within 20 Miles of the Sea Coast, and not in any inland Part of the Kingdom ; and farther it must be proved, that the Person was actually passing from some Sea-coast, and not from one inland Town to another.

These are such Proofs, my Lords, as, it cannot be supposed, could be made against an innocent Man ; but every one of these Safe-guards for Innocence, is by this amending and improving Clause left out ; for by this new Clause, if a Gentleman with Pistols before him be found riding, almost in any Part of *England*, in Company with another Man, who has got seven Pounds of Tea, or 30 Guineas-worth of Lace in his Cloak-bag, and who cannot prove that the Tea or

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Anno 9. Geo. II. 1736. { Lace was duly entered, and the Duties regularly paid, that Gentleman, be he what he will, is a Smuggler, and guilty of Felony, within the Words of this new Clause, tho' he did not so much as know that his Companion had any Goods or Merchandize in his Custody. The Officer who seizes and prosecutes, has no Occasion to prove that the Goods were in the Gentleman's Custody, or that he knew any thing of such Goods being in his Companion's Custody : The Officer has no Occasion to prove that the Goods were actually run ; but the Gentleman must prove that the Duties were paid, which will in all such Cases be impossible for him to do, nay, though his Companion were really an honest Man, it may be impossible even for him, to prove that the Goods were entered and the Duties paid ; for if he bought them from a Shopkeeper, who was a Smuggler, that Shopkeeper would certainly deny that he sold any such Goods : And lastly the Officer has no Occasion to prove, that the Gentleman was passing from any Sea-coast, or that the Goods were seized within twenty Miles of any Sea-coast ; if the Gentleman was only passing from one inland Town to another, but unluckily happened to be within five Miles of any navigable River, which includes many inland Parts of *England*, when the Goods were seized, he thereby forfeits his Estate and Liberty, and even exposes his Life to great Danger ; for it is not quite so safe, with respect to a Man's Health, to travel to any Part of the *West-Indies*, as to travel to *Montpelier* or *Naples* ; and when a Man has forfeited his Estate, without making any Provision before-hand, which an innocent Man will never think of, it is not to be supposed that he can have the Conveniences necessary for preserving his Health in his Travels.

With regard to the Clause relating to Assaults upon Officers, I must still look upon it, my Lords, as a most extraordinary, and a most dangerous Clause, notwithstanding the Excuse made for it ; because it is not confined to Assaults made by Smugglers upon Officers, or to Assaults made upon Officers, in the Execution of their Office ; but it is a most general Clause, and comprehends every Quarrel or Combat that shall happen, at any Time, or in any Place, between any one of his Majesty's Subjects, and any one of his Majesty's Custom-House or Excise Officers ; and it will certainly encourage those Officers to provoke People to assault them, in order that they may from thence have an Opportunity to extort Money and raise Contributions upon those they have so provoked. Then again, the Cause assigned for granting such a Privilege to Officers, is founded upon a Presumption, which neither can nor ought to be presumed :

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To presume that a County or a Jury, will not do justice, Anno 9. Geo. II. may be made a Foundation for extending this Privilege to all Actions and Prosecutions that shall be brought against, as well as to all that shall be commenced by any of his Majesty's Officers; and thus I do not know, but we may at last go so far as to have all such Actions and Prosecutions determined before the Commissioners of the Customs or Excise, and them only. *Principiis obsta* is a good Rule in all Cases, and I think there is a Necessity for observing it in this. The other Clause, with respect to Bail, is established upon the same wrong Foundation. and is an Alteration of the common Law, which may be of the most dangerous Consequence; for we know how apt Justices of Peace may be made to favour Officers, and to judge that they are within this Clause, even when they have committed the most cruel Murders.

As to our Trade, my Lords, I will aver, that there is no Nation in the World where Merchants are subjected to so many Burdens, Dangers, and Inconveniences upon Import and Export, or where the Laws relating to Trade, foreign and domestic, are so voluminous and incomprehensible as they are in this; and if we go on at the same Rate, a Captain of a Ship will at last be obliged almost to load his Ship with Acts of Parliament, before he can be fully apprized of all the Duties he must pay, and all the Directions he must observe, with respect to the Importation and Exportation of his Goods. I wish we would consider this, while we have some Trade remaining; but it does not seem to be much considered by this Bill; for it will certainly be a great Inconvenience to a Master of a Ship to have his Hatches opened, his Cabin and his Ship between Decks rummaged, and all the Boxes and Bales that may be there turned topsy-turvy, where he is lying at Anchor, within what may be called the Limits of a Port, waiting for a calm Sea and a fair Wind. The avoiding of this Inconvenience will make Masters keep their Ships out at Sea in a Storm, when they might safely come to an Anchor within the Limits of some Port, and may consequently prove the Loss of many a *British* Ship: And to pretend, that Officers will never run the Risk of exacting illegal Fees or Perquisites, or that such Officers will always be dismissed, is pretending to that which is contradicted by daily Experience; for wherever there is any such Opportunity given, we find it is always taken hold of, and sometimes most oppressively used.

Thus, my Lords, I think I have shewn, that every one of the Excuses made for the Clauses objected to is without any Foundation; and as the Bill in general is of a most dan-

Anno 9. Geo. II. <sup>1736.</sup> gerous Nature, it ought, I think, to be delayed till another Year. In this there can be no Danger ; for no Man can depend upon such a Bill's passing even in the next Session, nor can any Man depend upon that Bill's containing such an Indemnity as this does ; and it would be ridiculous to imagine, that such an Indemnity to be then passed, would be granted for all smuggling Crimes to be committed before the 27th of April next ; therefore no Man can by such Hopes be induced to engage, in the mean Time, in any smuggling Practices.

To imagine that the latter Part of this Bill is any sort of Consideration for that Indemnity which is granted by the first, is, in my Opinion, not consistent with that Respect which is due to his Majesty ; for no Act of Grace or Mercy which proceeds from the Crown, ought to be presumed to flow from the Expectation of any valuable Consideration, but from his Majesty's Wisdom and Goodness only ; therefore the latter Part may be made temporary, without doing any Injustice to the Crown : And if we were to look upon the second Part as a Consideration for the first, as it stands at present, I must think it a Consideration of a Value by much too considerable ; for exposing the Constitution to Danger, or the Innocent to suffer, if it were but for one Year, is, in my Opinion, too valuable a Consideration to be given for an Indemnity to all the Rogues in the Kingdom.

As for the Fears which have been expressed, that any Amendment we may make, may prove the Loss of the Bill for this Session at least, there cannot be the least Ground for them ; for surely we may make what Amendments we please to any Act of Indemnity ; and if the latter Part of the Bill be of the Nature of those Bills, which it is pretended we cannot amend, it ought to have been made a separate Bill, it ought not to have been tacked to a Bill of Indemnity ; therefore, my Lords, in order to put an End to such Pretences, or at least to such Practices, we ought, I think, to make as many Amendments as we can possibly find any the least Occasion for.

Another Amendment offered by the Earl of *Strafford*.

Agreed to in the Committee, and flung out upon the Report.

Besides the Amendments above-mentioned, to which only this Debate related, the following Amendment was offered by the Earl of *Strafford*, viz. Page 30th, Line 13th, leave out from (notwithstanding) to (and) in the 26th Line.

Which Amendment was likewise agreed to in the Committee, but flung out upon the Report ; and after all the Amendments made in the Committee were thus disagreed to, then the last Clause now standing in the Act, relating to the Court of *King's-Bench* and Court of Justiciary, was proposed

led to be added, which was agreed to; and next Day, be- Anno 9. Geo. II.  
ing *Wednesday, May 19th*, the Bill was read a third Time 1736.  
and passed, upon a Division, *Contents* present 39, Proxies 18, in all 54. *Not Contents* present 32, Proxies 14, in all 46, whereupon the following Protest was entered, *viz.* Bill passed.

*Dissentient.*

1. **B**ecause some Parts of this Bill are so repugnant to the Protest thereon, Laws and Constitutions of this Kingdom (as we apprehend) that we could not consistently, with the Rules of Reason and Justice, concur in the passing of it: the Substance of one Clause in this Bill being to this Effect, *viz.* 'That upon Information before a Justice of Peace, that any Persons, to the Number of three or more, who are or have been, after the 24th Day of *June*, 1736, armed with Fire-arms, or other offensive Weapons, with Intent to run Goods, such Justice shall and may grant a Warrant to a Constable to apprehend such Persons; and if such Justice finds Cause, upon Examination, he shall and may commit them to the next County Goal, there to remain without Bail or Mainprize, until discharged by due Course of Law; or, upon Conviction, they are to be adjudged guilty of Felony.' Now as this Bill is to create a new Kind of Felony, without Limitation of Time or Place, upon Principles unknown to our Law, we cannot but think it should be made so plain and clear, that the Judges in *Westminster-Hall* might determine upon it, without Doubts or Difficulties: But we conceive, as this Bill now stands, many Doubts may arise as to the Construction of it.

2. Because we do not know of any one Act in the Statute-Book, whereby it is put in the Power of a single Justice of the Peace to commit Persons, without Bail or Mainprize, upon a bare Information, without any Proof. And although the House found it necessary, to repeal so much of the Clause aforesaid, as allows the Justices to commit without Bail or Mainprize, by adding a Rider, 'to empower the Court of *King's-Bench* to grant Bail to Persons so committed,' we cannot be of Opinion, that the Objections to the Bill were removed, since the Power of Imprisonment still remains in the Hands of a single Justice of the Peace, upon a bare Information of an Intent to run Goods, without any overt Act to prove that Intention, than what may be a common and innocent Circumstance, *viz.* The riding three or more in Company with usual Arms, and no Limitation fixed either for Time or Place.

3. Because



Anno 10. Geo. II.

1736-7.

3. Because this Bill was altered in the Committee, by the unanimous Consent of all the Lords present, and those Alterations were disagreed to upon the Report, without sufficient Grounds, as we conceive: And as two noble and learned Lords, who preside in the two greatest Courts of the Kingdom, shewed by the strongest Arguments, that the Bill, as it now stands, may be dangerous to the Liberties of our Fellow-Subjects, we could not agree to the passing of it, however expedient or necessary it may be supposed in other Respects, being fully persuaded it would have been better to have left this Matter to the Laws now in being (already very severe) and to the Consideration of a future Session of Parliament, than to constitute a Precedent of such dangerous Consequence, and to enact a Law, which, as we fear, may be attended with perpetual Grievances, Injustice and Oppression.

*Foley, Warrington, Strafford, Montjoy, Coventry, Northampton, Shaftsbury, Weymouth, Beaufort, Bolton, Cobham, Thanet, Oxford and Mortimer, Litchfield, Bathurst Winchelsea and Nottingham.*

Speakers;

The Speakers in the several Debates which happened in the House of Lords, on Occasion of this Bill, were as follow, *viz.* Against the Bill, or for the Amendments, were the Lord Chancellor, the Lord *Hardwick*, the Lord *Carteret*, the Lord *Bathurst*, and the Earl of *Strafford*; and those who spoke for the Bill, and against the Amendments, were the Duke of *Argyle*, the Earl of *Illy*, the Earl of *Cholmondeley*, and the Lord *Hervey*.

The Bill was then returned to the Commons, who after Debate, agreed to the Amendment, and May 20, the King put an End to the Session with a Speech, which see in *Chand. Hist. Anno 9. Geo. II. 1736. Pag. \* 237.*

The Third Session.

THE third Session of the second Parliament of King George II. was postponed from Jan. 21 to Feb. 1. on account of the King's Indisposition, occasioned by the Fatigues of his Voyage in his Return from *Hanover*, and then was opened by Commission with a Speech, which is to be found in *Chand. Hist. Anno 10. Geo. II. 1736-7. P. 225.* and to which the Lords returned the following Address.

The Lords Address,

*Most gracious Sovereign,*  
WE your Majesty's most dutiful and loyal Subjects, the Lords spiritual and temporal in Parliament assembled, beg Leave to approach your Throne, with Hearts full of that Zeal and Affection for your Person and Government,

ment, which become the most faithful Subjects to the best Anno 10. Geo. II. of Kings.

1736-7.

Our Duty and Gratitude to your Majesty have, on many Occasions of this Nature, called upon us to lay at your royal Feet our thankful Acknowledgments for preserving to your own Subjects the Blessings of Peace; and the additional Motive of our unfeigned Regard to the common Interests of *Europe*, in which it is impossible for this Nation to be unconcerned, makes us now receive, with great Satisfaction, your gracious Communication, that the Re-establishment of the general Tranquillity is far advanced.

How happy and secure soever your Majesty's Wisdom, under the Protection of the divine Providence, may render these Kingdoms, it was impossible for us to remain wholly unaffected with the Miseries of War, suffered by other Parts of *Christendom*; and we cannot but rejoice in the pleasing Hopes, that all Dangers and Apprehensions of new Troubles may be happily removed.

At the same Time, we esteem it a fresh Instance of your Majesty's never-failing Care of the public Welfare, that you put us in mind to be attentive to the final Conclusion of this great Work. As your Majesty hath, on your Part distinguished your paternal Tenderness for your People, in not permitting them to be hastily involved in the Calamities of War; it would be the most unbecoming Return for so great a Benefit, to shew any Signs of an indolent Security: And we beseech your Majesty to accept the strongest and most affectionate Assurances, that we can never entertain the least Thought of leaving ourselves in a defenceless Condition; but that we will always cheerfully concur in all such Measures as shall be necessary to maintain the Honour and Safety of your Majesty and your Government, and the true Interest of your Kingdoms.

The gracious Approbation which your Majesty is pleased to give of the Conduct of this Parliament, affords us great Comfort and Encouragement; and your vigilant Care to execute the Laws with Justice and Impartiality, and to protect the Rights and Properties of all your Subjects, fills our Minds with the most lasting Impressions of Thankfulness. Under this deep Sense of our Obligations to your Majesty, we cannot sufficiently express our Detestation of those insolent Riots and Tumults, which have of late appeared in different Parts of the Kingdom, in Defiance of the Law, and Violation of the public Peace. Every Part of the Behaviour of these daring Offenders appears to us as weak and unreasonable as it is wicked; except that they have considered the Interests and Views of your Majesty and your Parliament, as being

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being so closely united, that it was impossible to traduce or oppose the one, without including the other. Our Duty, as well as our Safety, makes it incumbent upon us to give another Mark of this happy Union, by testifying our humble Concurrence in your Majesty's just Opinion, that such audacious Practices ought to be timely suppressed: And as we do, with the firmest Confidence, rely on your Majesty's Authority being prudently and vigorously exerted for this necessary End; so we assure your Majesty, with the greatest Sincerity, that our Endeavours and Assistance shall never be wanting to support that Authority, and to preserve the Quiet and Security of the Nation.'

To which Address his Majesty returned the following Answer.

*My Lords,*

King's Answer. " I Thank you for this dutiful and loyal Address. The Affection you shew to my Person and Government, gives me the greatest Satisfaction.

" My principal Care is to secure to my People the Blessings of Peace, and the full and undisturbed Enjoyment of all their civil and religious Rights, and to preserve the Tranquillity and good Order of the Kingdom.

" The Continuance of the good Harmony between me and my Parliament, will enable me to pursue with Effect these great and desirable Ends."

King's Speech taken into Consideration.

*Thursday* the 10th of *February*, the House of Lords, according to Order, resolved itself into a Committee of the whole House, for the taking his Majesty's Speech into Consideration; upon which Occasion as there was not properly any formed Debate upon any one Point, we can only give the Heads of some of the most remarkable Speeches.

The Lord *Delaware* having taken the Chair, the Lord *Carteret* stood up and spoke to the following Effect, *viz.*

Lord Carteret's Speech concerning Riots.

' My Lords, his Majesty in his Speech, delivered to us by his Commissioners, most justly took Notice of the many Riots and Tumults that have lately happened in this Kingdom; and as his Majesty most wisely thought it an Affair of such Consequence as to deserve being mentioned by him to his Parliament, I expected that this House would have immediately resolved upon taking that Part of his Majesty's Speech into Consideration; but as a Motion for that Purpose would have come more properly from some other Lords, I delayed for some Days taking Notice of it, or making any

any Motion for our taking that Affair into our Consideration. Anno 10. Geo. II.  
 This, my Lords, was my Reason for allowing some of the  
 first Days of the Session to pass over, without taking the  
 least Notice of what his Majesty had so wisely and so neces-  
 sarily mentioned in his Speech; but upon finding no Step  
 made towards it by any other Lord, as I thought it an Af-  
 fair which ought not to be delayed, I took the Liberty to  
 move your Lordships for the Committee you are now in;  
 and as I moved for your going into this Committee, I think  
 it incumbent upon me now to explain what I meant or in-  
 tended by my Motion.

Tho' none of the Riots or Tumults that have lately hap-  
 pened in this Kingdom, seem to have been aimed directly a-  
 gainst the Government, yet, my Lords, it must be granted,  
 that no such Thing can happen in any Country, in which  
 the Government is not some way concerned; for as the  
 Peace and Quiet of the People are disturbed by such tumult-  
 uous Assemblies, and as it is the Business of every Govern-  
 ment to preserve the Peace and Quiet of the People, there-  
 fore wherever any such Thing happens, the Government  
 ought to look upon itself as deeply concerned; and if we  
 consider what mighty Consequences have arisen from very  
 small Beginnings, if we consider how often Governments  
 have been overturned by Tumults which at first seemed in-  
 significant, which seemed no way intended for any such  
 End, we must conclude, that not only our Government, but  
 our present Establishment, and even our happy Constitution,  
 are concerned in the Riots which have lately happened in se-  
 veral Parts of this Kingdom. For this Reason, it is the Du-  
 ty of this House, as being the King's chief Council, not to  
 let such Riots and Tumults pass over unobserved, but to en-  
 quire narrowly into them, in order to discover their true  
 Causes, and to provide an effectual and a legal Remedy; for  
 if the Law should lose its Force, if it should become ne-  
 cessary upon all Occasions to make use of a military Force  
 for preserving the Peace of the Kingdom, our Constitution  
 would be at an End, we could not then be said to be under a  
 civil but a military Government.

Of all the late Tumults, the first I shall take Notice of  
 are those which have happened in the West on account of  
 the Turnpikes. Why Turnpikes should occasion Disturban-  
 ces in that Part of the Country more than in any other, is  
 what I shall not, at present, pretend to account for; but these  
 Disturbances were such, it seems, that for quelling them it  
 became necessary to employ a military Force, which I am  
 very much surprized at, considering the severe Law your  
 Lordships passed some Time since against those who should

Anno 10. Geo. II. be concerned in any such. To me it is amazing to see that the civil Power, armed with such a severe Law, should not be able to prevent, as well as to quell any such Tumult, without the Assistance of the Gentlemen of our Army; and therefore I am apt to suspect those Tumults proceeded, not from any want of Power in the civil Magistrate, but from some other Cause, perhaps from some real Injustice or Oppression brought upon poor People by means of those Turnpikes. The People seldom or ever assemble in any riotous or tumultuous Manner unless when they are oppressed, or at least imagine they are oppressed. If the People should be mistaken, and imagine they are oppressed when they are not, it is the Duty of the next Magistrate to endeavour first to correct their Mistake by fair Means and just Reasoning. In common Humanity he is obliged to take this Method, before he has recourse to such Methods as may bring Death and Destruction upon a great Number of his Fellow-Countrymen, and this Method will generally prevail where they have not met with any real Oppression: But when this happens to be the Case, it cannot be expected they will give Ear to their Oppressor, nor can the severest Laws, nor the most rigorous Execution of those Laws, always prevent the People's becoming tumultuous; you may shoot them, you may hang them, but, till the Oppression is removed or alleviated, they will never be quiet, till the greatest Part of them are destroyed. This is the chief Reason and the chief End of all Parliamentary Enquiries, and this ought to be our chief View in the Enquiry we are now going upon. If we find any Injustice has been done, if we find any of those Tumults have proceeded from Oppression, the only way to prevent such Tumults in time to come, will be to remove that Oppression, and to punish severely every one of those who have been guilty of it. This is the only human Method of preventing Riots or Tumults; for I hope none of your Lordships are of Opinion, that any more severe or any larger Powers ought to be granted by Law: You have already, by a late Law, made it Death without Benefit of Clergy, to be concerned in riotously breaking down any Turnpike: You cannot, by any Maxims of Government hitherto pursued in this Kingdom, inflict any severer Punishment; and I hope you will not, under Pretence, that the civil Magistrate is not able to execute this Law, agree to the erecting a Barrack at every Turnpike, in order that the civil Magistrate may have it in his Power to shoot every Man who presumes to make his Escape from that Punishment which is provided for him by Law.

As for those Tumults which happened in *Spittlefields*, and that Neighbourhood, the Government was, I think, my Lords, as little concerned in them, as ever it can be in any such: They proceeded entirely from an accidental Quarrel that had happened between the *English* and *Irish* Labourers; and they might have been quelled, and the Ringleaders punished, even tho' we had not had a Regiment of regular Troops in the Kingdom. Then with respect to that most ridiculous Affair that happened in *Westminster-hall*, it was, it is true, a most daring Insult both upon the Government and the Courts of Justice; but I do not think it can be called either a Riot or a Tumult. There was, I believe, but one Person actually concerned in it, and but very few privy to it; and as it answered no End, nor could proceed from any sudden Passion or Resentment, I must think none but mad Men could have any Hand in it. If we consider the Place where, and the Person before whom this ridiculous Insult was committed, we must conclude that no Man in his right Senses would have been guilty of it, or would have so much as thought of any such impudent and foolish Contrivance; for the noble Lord who presided in that Court, has, I am sure, gained the Affection and Esteem of every Man of Sense in the Kingdom. He is a Magistrate of great Power; but, my Lords, great as it is, his Authority is equal to his Power; for Power and Authority we must always look as two Things of a very different Nature: Power, the Legislature may give, but Authority it can give no Man. Authority may be acquired by Wisdom, by Prudence, by good Conduct and a virtuous Behaviour, but it can be granted by no King, by no Potentate upon Earth. A Man's Power depends upon the Post or Station he is in, but his Authority can depend upon nothing but the Character he acquires among Mankind; and the more Power a Fool or a Knave is vested with, the more he will be despised, the more generally will he be loaded with Hatred and Reproach.

The Riots and Tumults which proceed from Smuggling are, my Lords, of an old Standing, and of a very different Nature; but they are of late become so frequent, and the Smugglers are become so numerous and so audacious, that they deserve our closest Attention. I am afraid some extraordinary Methods must be made use of for suppressing them; but the only Way of contriving an effectual Method for that Purpose will be, to enquire into their Causes, and to take such Measures as may be proper for removing those Causes; for in the Body political, as in the Body natural, while the Cause remains, it is impossible to remove the Distemper. Severe Laws against Smuggling, and the most rigorous, the

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most arbitrary Execution of those Laws, we know by the Example of a neighbouring Kingdom, will never prevail : By such Methods we may irritate, we may destroy the Subject, and at last perhaps bring on a Distemper of a much more dangerous Nature ; and I am afraid the Law passed last Year for preventing Smuggling, will be found to be a Remedy of such a Nature. If that Law had been passed in that Form and Shape, in which it was once put by this House, it would not, in my Opinion, have been so extraordinary, nor so dangerous ; and, I believe it would have been much more effectual. We were told by the best Lawyers in *England*, that by that Law, as it was first brought in, and afterwards passed, no Judge in *England* could know how to direct a Jury ; and after they had told us so, I must think it was a little odd to turn it out of that Shape we had put it into by their Advice, and pass it in that very Shape, in which they told us it could have no Effect.

Upon this Occasion, I must observe, my Lords, that even that wicked, that atrocious Riot and Murder committed at *Edinburgh*, proceeded originally from Smuggling ; for it was the Execution of a Smuggler, that occasioned all that Disorder and Wickedness which afterwards ensued. That Tumult and the Murder they committed, was, indeed, one of the most extraordinary, that ever happened in any Country, and it was, I think, one of the greatest Indignities, that ever was put upon an established Government. For this Reason, it highly deserves our Attention, and we ought to look upon it as the more dangerous, and the more to be taken Notice of, because it was carried on with a sort of Decency and Order ; for as *Germanicus* observed of a Mutiny among the *Roman* Soldiers, it was the more to be dreaded, because it seemed to be attended with no Disorder or Confusion. I am sorry to hear the Government has not yet been able to discover, or at least to apprehend, any of the Persons guilty of that barbarous Murder ; for where such Persons were concerned, many of their Names may surely be discovered, and if they are fled from Justice, fly where they will, they ought to be brought back and punished : By our own Power, we may bring them back from our Plantations, and by our Interest, we may be able to bring them back from any foreign Country ; for no State in *Europe* will protect such cruel Murderers ; A foreign State may perhaps, for political Reasons, give Shelter to the Rebels of a neighbouring Country, but I cannot think any State will refuse to give up such Criminals, when a proper Application is made to them for that Purpose. The Names of the Murderers must be all known in the City of *Edinburgh*, at least the Names of such as have absconded

abfconded or fled on that Account, and if the Citizens re-  
 fuse to give an Account of their Names, there may be Me-  
 thods found for compelling them: They may be threatened  
 with removing the Courts of Justice, as was done in the  
 late Queen's Time, when the Tumult happened there, which  
 occasioned the Execution of Captain *Green*. Upon that Oc-  
 casion her Majesty, by the Advice of her Council here,  
 wrote a Letter to the Privy Council of *Scotland*, ordering  
 them to signify to the Magistrates of *Edinburgh*, that, in  
 case any such Tumult ever happened again, the Courts of  
 Justice should all be removed from that City; from whence  
 I must conclude, that the King has a Power to remove them;  
 for if our King had no such Power, I am sure no such thing  
 would have been threatened by so wise an Administration, as  
 we had then the Happiness to have at the Head of our Af-  
 fairs.

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But, my Lords, if the Citizens of *Edinburgh* should ob-  
 stinately protect or conceal those Murderers, there are Cases  
 in which a City may forfeit her Charter, and become as it  
 were in *Miser cordia Regis*, with respect to her whole Liber-  
 ties and Franchises. The City of *Cambridge* was declared  
 by Parliament in the Reign of *Richard II.* to have forfeited  
 all her Liberties, on account of an Insult committed by the  
 Citizens upon the University; in consequence of which,  
 many of their Privileges were taken from them, and grant-  
 ed to the University: From hence we may see, that a City  
 may forfeit her Privileges, and I do not know but the City  
 of *Edinburgh* has already done so; for if it should appear,  
 that the Citizens had been generally concerned in that Riot  
 and Murder, if they should protect or conceal the Murder-  
 ers, or if the Magistrates of that City had either thro' Fear  
 or Design connived at the Murder, they might be justly  
 deemed to have forfeited their Charter; and in such a Case,  
 I do not know but it may be thought proper to divest them  
 of some of their Privileges, by way of Punishment, and as  
 an Example for other Cities in time to come.

For this Reason, I think, my Lords, we ought to  
 make a particular Enquiry into that Affair, and into the  
 Conduct of the Magistrates upon that Occasion; and this  
 Enquiry is, the more necessary, because it does not seem,  
 that any full Discovery has yet been made of the Authors  
 of that Riot. This I hope may be obtained by virtue of the  
 Power and Authority of Parliament; and when we have  
 discovered the Authors, we may take such Measures as shall  
 be thought most proper for bringing them to condign Punish-  
 ment. As this Tumult at *Edinburgh* was of the most heinous  
 Nature, and as a very high Indignity was by those Rioters  
 put



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put upon the Crown itself, we ought, in my Opinion, to begin with it; but let us begin where we will, it is incumbent upon us to make some Enquiry into that and the other Riots which have lately happened; for after his Majesty has in his Speech expressly mentioned and complained of those Riots and Tumults, it would look very odd in this House to take no notice of them, nor make any Attempt for punishing the Authors of those that are passed, as well as endeavouring to prevent any such for the future. Such a Neglect would show a very great Disrespect and a Disregard for the Honour and Interest of our Sovereign, which I am sure every one of your Lordships will endeavour to avoid, as much as I can. I shall not at present take upon me to make you any Motion, because I think it will come better from those who have the Honour to be employed in the Administration; and I hope some of them will stand up and move for some sort of Enquiry into that Affair, or make some Motion tending to that Purpose.

For my own part, my Lords, in taking notice of the Affair in the Manner I have already done, I have done my Duty as a Lord of this House; and if nothing farther should be done, I shall from what I have said, have at least this Advantage, that if I should find myself obliged to oppose any Methods that may hereafter be proposed, for preventing such Riots in time to come, which may very probably be the Case, I hope it will not be thrown in my Teeth, that I am a Favourer and an Encourager of such Riots; for, from what I have now said, the contrary will appear: It appears, I believe, that I am as great an Enemy to Riots as any Man: I am sorry to see them so frequent as they are; but I shall never be for sacrificing the Liberties of the People, in order to prevent their engaging in any riotous Proceedings; because I am sure it may be done by a much more gentle and less expensive Method. A wise and a prudent Conduct, and a constant Pursuit of upright and just Measures, will establish the Authority as well as the Power of the Government; and where Authority is joined with Power, the People will never be tumultuous; but I must observe, and I do it without a Design of offending any Person, that ever since I came into the World, I never saw an Administration that had, in my Opinion, so much Power or so little Authority. I hope some Methods will be taken for establishing among the People in general that Respect and Esteem, which they ought to have for their Governors, and which every Administration ought to endeavour, as much as possible, to acquire: I hope proper Methods will be taken for restoring to the Laws of this Kingdom their ancient Authority; for if  
that

that is not done, if the Lord Chief Justice's Warrant is not of itself of so much Authority, as that it may be executed by his Tipstaff in any County of *England*, without any other Assistance than what is provided by the Law, it cannot be said that we are governed by Law, or by the civil Magistrate: If regular Troops should once become necessary for executing the Laws upon every Occasion, it could not then be said, that we were governed by the civil Power, but by the military Sword, which is a sort of Government I am sure none of your Lordships would desire ever to see established in this Kingdom.

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The Duke of *Newcastle* spoke next, and after him the Duke of *Newcastle*.  
 Lord *Hardwick*, in Substance as follows, *viz.*

My Lords, I agree with the noble Lord, that it is both Lord *Hardwick*, proper and necessary for this House to take some notice of the many Riots and Tumults that have lately happened in this Kingdom. In Duty to our Country, we are obliged to enquire into their original Causes, and to contrive, if possible, some effectual Means for preventing the like in time to come; and as his Majesty has been so good as to mention them in his Speech to his Parliament, we are from thence bound in Duty to our Sovereign, to take notice of what has been so strongly recommended by him; therefore I make no doubt but a Motion would have been made for that Purpose by some of those concerned in the Administration, if they had not been prevented by the noble Lord who spoke first; and as his Lordship was pleased to move for our going into this Committee so very early in the Session, I am sure he cannot complain, that the Affair was either neglected or too long postponed, by those whose proper Business it was to take notice of it. That some sort of Enquiry ought to be made into those Riots, I therefore presume to be the Opinion of every Lord in this House; but as they have been of late not only very frequent, but so general, that they have in some manner spread over the whole Kingdom, I must think the Enquiry ought to be as general as the Grievance complained of is general; for surely whatever Remedy may be proposed, whatever Method may be contrived for preventing such Riots in time to come, that Remedy, or that Method must be general, and therefore the Enquiry ought to be general: A particular Enquiry into the Causes of any one Riot, can never point out to us the Causes of any other, nor can it communicate to us any Knowledge or Information, which can be of Use to us in contriving a general Regulation. Besides, a particular Enquiry into every one of the Riots that has lately happened, would take up so much Time, that it would be impossible for this House to go through.

Anno 10. Geo. II. 1736-7. through it in one Session, were the Session to continue from one End of the Year to the other ; and as none but Persons of the lowest Rank had been concerned in any one Riot that has happened, it is below the Dignity of Parliament, to enquire particularly into them. For these Reasons, I think a general Enquiry is the most proper, and indeed the only one we can go through with ; and if the noble Lord will be pleased to move for any such Enquiry, as I seconded his Motion for our going into this Committee, I shall likewise very readily second his Motion for that Enquiry.

As for the real Causes of the several Tumults that have happened, they will best appear when we come to examine into them ; but, my Lords, I am already very apt to believe that all the Tumults that have lately happened, proceed from one and the same Cause : I believe they proceed from a want of Power in the Civil Magistrate to prevent or punish, and a too great Liberty in others to mislead the People, and to stir them up to Riot and Disorder. The People, it is true, seldom grow mutinous, but when they are, or think they are oppressed ; but as the People are always jealous of those in Power, and mighty apt to believe every Piece of Scandal or Reproach that is thrown upon them, it is very easy for those who are prompted by their Malice or Revenge, to make the People believe they are oppressed, when there is not the least Ground for any such Insinuation ; and while the Civil Magistrate has not a sufficient Power to put a stop to such Insinuations, or to punish the Fomenters of Sedition, it will be impossible to prevent Riots, especially, if the People should imagine, or be made to believe, that he had not a Power to punish them for any such Riot. This I take to be the principal Cause of all our late Tumults, this I believe will plainly appear upon a general Enquiry, and when it does appear, it will be easy for the Legislature to supply that Defect in the Power of the Civil Magistrate, and to restrain that Liberty, which the Sowers of Sedition have lately made so great and so wicked a Use of.

Whatever general pretences of Oppression have been made by those who have private Ends to serve by doing so, I have never yet heard of any particular Man, who could with justice complain of his being oppressed ; nor can it be so much as alledged, I believe, that any particular Oppression gave occasion to any one of the Riots that have happened. Those Tumults in the *West*, were occasioned by the setting up of Turnpikes, at Places where all the Gentlemen in the Country, where the Legislature itself, thought they were necessary ; but no Turnpike can be set up, nor any public Regulation

Regulation made, which will not be inconsistent with the private Interest of some Persons, and if such Persons think they may, they certainly will destroy that which is inconsistent with their private Interest. — The Riots in *Spittle-fields* were so far from proceeding from Oppression in any Magistrate, that they proceeded from that which often occasions Oppression, I mean the unlawful and unjust Combination of Journeymen and Labourers, to keep up or enhance their Wages. — The atrocious Riot and cruel Murder in the City of *Edinburgh*, proceeded from the Crown's Reprieving a Man, upon a Representation signed by a great number of Noblemen and Gentlemen, that the Man was unjustly condemned, or at least that the Sentence was too rigorous; and this Reprieve was only for a few Weeks, that the Crown might have time to enquire narrowly into the Case, and to pardon or punish, according as the Circumstances should appear. — Then as to that Affair in *Westminster-hall*, I am sorry, my Lords, to hear it so slightly passed over; your Lordships may call it a Riot, Tumult, Insult, or what you please; but it was certainly one of the most audacious Affronts that was ever offered to an established Government; and could not, I am sure, proceed from any Oppression, unless the Acts of the whole Legislative Power of the Kingdom are to be called Oppression. The other Riots seemed to point only at private Men; but that Riot or Insult, was levelled directly against the Government, nay, not only against the Government, but against our present happy Establishment. I do not mean, my Lords, the Powder or Rockets then blown up; for I do not believe the Persons guilty, call them Mad-men, or what you will, had a Design to blow up the Hall, or to hurt any Person that was in it; but I mean the scandalous and seditious Libels spread about in the Hall by the Explosion, and afterwards dispersed through every Part of this great City. Those Libels not only reflected in the most scandalous Manner upon several Acts of Parliament, but, by Insinuation, denied his Majesty's Right to the Crown, and in some Manner, asserted the Right of the Pretender. What might have been the Aim of the Authors of this Insult, or whether they had any Aim, I shall not now enquire; but it is certain, if they had not been discovered, and as severely punished, as the Lenity of our Laws, and the Mercifulness of our present Government would admit of, their Insult would at least have answered this End, that it would have given People a mean Opinion of our Government, and might have given rise to seditious Attempts, of a much more dangerous Nature.

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I am surprized, my Lords, to hear it said, that if the Military Force should now and then, upon extraordinary Occasions, be called to the Assistance of the Civil Magistrate, we should, upon that Account, become subject to the military Sword, or that our Government should, by such Means, become a military Government. I hope it will be allowed, our Soldiers are the King's Subjects, as well as other Men; and it is well known that most of our Magistrates, especially those concerned in the Execution of the Law, have a power to call any of the King's Subjects they can see, to their Assistance, for preserving the Peace, or for enabling them to execute any of the King's Writs; and in case of any such Call, we likewise know, that every one of the King's Subjects, so called, is obliged to obey; if they do not, they are guilty of a Misdemeanor, for which they may be indicted, and for which they may, by express Statute, be fined and imprisoned: Why then may not a Civil Magistrate call the Soldiers to his Assistance as well as other Men? For my Part, I can see no Difference it can make, with respect to our Form of Government, and I am sure, with respect to the End or Intention of calling any Man to his Assistance, it will be much better answered, and with more Safety to the Subject in general, by his calling the King's Soldiers to his Assistance, than by calling any other of the King's Subjects: Therefore, while the King's Troops act under the Direction of the Civil Magistrate, and as his Assistants only, we shall be as much under a Civil Government as if we had no such Troops; the only Difference is, that with the few Troops we have, the Laws may be put in Execution, and Smugglers, Thieves, Highwaymen, and such like Rogues, apprehended and brought to condign Punishment, without risking the Lives of his Majesty's industrious Subjects, or calling them away from their usual Employments.

From what I have said, my Lords, I think it will appear, that we ought not only to have regular Troops, but that they ought to be employed by, and at the Command of the Civil Magistrate; and Experience has shewn us, that they often become necessary for preserving the Peace of the Kingdom, and the Lives of innocent Subjects. In those Tumults which happened in the *West* about Turnpikes, it became necessary to employ a military Force, in order to preserve the Life of a Magistrate who was threatened by the Mob, for no other reason, but because he had been diligent in putting the Laws in Execution. In another Corner of the same County, (*Cornwall*) a Fellow took it in his Head to keep Possession of another Man's Estate by Violence, and in spite

spite of the Laws of the Kingdom ; for this Purpose he provided himself with several Confederates, as wicked and as foolish as himself, and with proper Arms for opposing all the Power he thought could be sent against him : The Sheriff of the County, assisted by the County, went to execute the King's Writ against him ; but, instead of submitting, he fired upon them, killed some of the Sheriff's Assistants, and obliged them to retire. Was it not then proper, was it not necessary to call the King's Troops to the Assistance of the Sheriff ? They were called, and, without the spilling of any more innocent Blood, the Laws were put in Execution, the Owner got Possession of his Estate, and the Criminal who dared to oppose the Law was hanged. Even but last Summer, it was highly probable that great Tumults would have been raised against the Law, for preventing the Retail of Spirituous Liquors ; for great Threatenings had been made, and some had publicly declared they would not give obedience to it ; but by the prudent Measures that were taken, and by shewing that the King's Troops would be employed against those who should dare to oppose the Law, all those Threats ended in a few Tricks to evade the Law, which I hope will be soon got the better of, by the Care and Diligence of the Commissioners of Excise. These few Examples shew, that a military Force becomes sometimes absolutely necessary for putting the Laws in Execution ; and if it were not for the few regular Troops we have, Riots would be more frequent than they are, and much more dangerous ; as will, I believe, appear by a general Enquiry into the Riots that have lately happened ; therefore I shall heartily agree in any Motion tending to the bringing on of such an Enquiry.

*The Lord Bathurst.*

My Lords, it must be confessed, that Riots and Tumults have of late been not only very frequent, but very general in this Kingdom, and therefore it may be, I think, justly concluded that there is some general Cause, some general Error, which makes our People so generally uneasy ; but I am very far from thinking, that general Cause proceeds from any Want of Power in the civil Magistrate, or from too great a Liberty in the People. There is no Country in the World where there are severer Laws against Riots, or where there are greater Powers given to the civil Magistrate for preventing or quelling them. The civil Magistrate has now greater Powers, and our Laws against Riots are more severe, than ever were known to our Ancestors ; and therefore I am apt to suspect, that most of our late Riots have proceeded from that general Cause from which almost all Tumults proceed, I mean, from

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AnnO 10. Geo. II. the unjust and oppressive Conduct, or from the supine Negligence and Indolence of those who are entrusted with the Execution of our Laws.

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When the People are made uneasy by the Oppressions of those entrusted with Power, or when wicked and evil-disposed Persons are allowed to become seditious or licentious by the Neglect of the civil Magistrate, the Parliament ought to interpose. If it does not, Tumults must of course ensue, and those Tumults may at last produce most extraordinary Events. Let us examine our own History, and we shall find, most of those Tumults or Riots we have any Account of, proceeded from the Oppression of those entrusted with Power, and a Neglect to remove that Oppression, or to punish the Oppressors. The famous Insurrection under *Wat Tyler*, (in the Minority of *Rich. II.*) we are expressly told by our Historians, at first proceeded from a heavy Tax then imposed, the great Powers granted for levying that Tax, and the oppressive Use made of those Powers by the Tax-gatherers. But, as Oppression seldom appears in one Shape only, as a general Discontent always arises from several Causes, so at that Time the People had several Reasons for being dissatisfied: They complained, that their foreign Enemies were allowed to ravage and plunder them with Impunity, and that their domestic Enemies, the Lawyers, ruined them with vexatious Suits and extorsive Fees; and they were not only oppressed by the Collectors of the public Revenue, but likewise by the Nobility, and Lords of Manors, who, by the great Powers and Privileges they enjoyed, kept the People in a sort of Slavery. This last sort of Oppression, indeed, we now seem to be in no Danger of; for our Nobility seem to have very little Power left in their Hands; but with respect to the other Grievances, we do not know but the People may now have Reason to complain of something like them, and if they have, those Causes of Complaint ought to be enquired into by Parliament, and removed as soon as possible.

Upon such Occasions, my Lords, it is not sufficient to quell the Riot, it is not sufficient to punish the Rioters, or to make severe Laws for punishing all such for the future: the Government, by good Luck, got the better of that Insurrection under *Wat Tyler*, and of all the other Tumults that happened about that Time, and great Care was taken to punish the Rioters with the utmost Severity; but no proper Care was taken to remove the Causes of those Riots, or to punish the Oppressors of the People. What was the Consequence? The Discontents of the People continued, and though, by the Severity that had been used, they were for some Time frightened from being guilty of any new Riot or Tumult, yet at last they gathered into a regular Army, and, under the Conduct of the Duke of Gloucester, defeated the King's Forces, banished, beheaded,

or

or hanged all his Favourites, and, among the rest, Sir *Robert Tresilian* (who had been one of the most rigorous in prosecuting and punishing the Rioters, and who, 'tis said, never wanted Reasons to countenance whatever he found was agreeable to the King) was accused of high Treason, impeached and condemned by the Parliament, and soon after hanged at *Tyburn*. This appeased the Minds of the People for some Time, but as that unfortunate King soon returned to his former Courses, and disregarded the Complaints of the People, Riots and Tumults continued during his whole Reign, and at last paved the Way for *Henry IVth's* ascending the Throne.

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Now, my Lords, as Riots and Tumults generally proceed from Oppression, or from Neglect in the civil Magistrate, and as both the Oppression and the Neglect of the civil Magistrate may appear in various Shapes, and may be very different in one Case from what it is in another, when several Riots have happened, at different Times, and in different Parts of the Country, it is impossible to discover the true Cause of any of them by a general Enquiry, nor will a particular Enquiry into the Cause of one discover the true Cause of another. I shall not at present tax the Magistrates at *Edinburgh*, or those in the *West*, or in any other Part of the Kingdom, either with Oppression or Neglect; but if any of them have been guilty of either, can that Oppression or Neglect be discovered by a general Enquiry? Or will an Enquiry into the Riot at *Edinburgh*, and the Conduct of the Magistrates there, discover to us, whether any of the Magistrates in the *West of England*, or in any other part of the Kingdom, have been guilty of Oppression or Neglect? The thing appears at first sight impossible, and therefore there is no Way of answering the Intention of his Majesty's Speech, or indeed our own Duty as Members of this House, but by a particular Enquiry into every one of the Riots that have happened, or at least into some of the most considerable of them; cost what it will, take up what Time it will, it must be gone about, and the sooner we begin, the greater Regard we shew both to our King and our Country. I cannot really comprehend what is meant by a general Enquiry: In my Opinion, it can mean nothing but an Enquiry into our Laws relating to Riots, and the Sowers of Sedition; for if you proceed to enquire into the particular Circumstances and Facts of all, or any one Riot that has happened, your Enquiry must become particular; and if you do not enquire into Circumstances and Facts, if you enquire only into our Laws, you cannot discover the original Cause of any one Riot that has happened.

If your Lordships have a mind to go upon an Enquiry into our Laws relating to Riots, and the Sowers of Sedition, I shall be far from being against any Motion for that Purpose; because



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because it will from thence appear, that our Laws against Riots are already as severe as they can be made, in a Country where no Racks or Tortures can be admitted; and it will likewise appear, that our Laws against those who stir the People up to Sedition, are as severe as they can, or ought to be made in a free Country. The general Method of stirring the People up to Sedition, is by spreading false and seditious Libels or Reports against their Magistrates, and every one knows how easy it is to prosecute the Authors of such, and how severely they are punished by the Laws of this Kingdom. Indeed the Method of Trial, which is by a Jury, and the principal Part of the Punishment, which is by Pillory, make it necessary for our Magistrates of all Degrees, to court the Esteem and Affections of the People; for in case of any general Discontent against any one Magistrate, a Jury will but seldom bring in a Verdict in his Favour, and when he does recover a Verdict, the principal Part of the Punishment is evaded, by the Favour of the Mob or Populace. I hope, my Lords, we have no such Magistrates at present; at least if we have, I am sure their Conduct ought to be enquired into; and if we have no such Magistrates, we cannot suppose that any of our late Riots were occasioned by the spreading of false and seditious Libels or Reports; because if they had, the Authors of such Libels or Reports would certainly have been prosecuted, and would as certainly have met with condign Punishment, by the Laws as they now stand; unless we suppose that some of our Magistrates have been deficient in their Duty, which is a Crime that ought to be punished, or at least censured, but it is a Crime that can be discovered only by a particular Enquiry into the Circumstances of each Riot; it can never be discovered by any general Enquiry.

We have not, it is true, my Lords, yet heard that a Man of any Figure was concerned in any of the Riots that have happened; I hope no such Thing will ever appear; but in such Cases we are not to regard the Rank or the Quality of the Persons concerned. A Tumult of the very lowest Rank of People may, if neglected, become very considerable, and generally produces the most fatal and the most cruel Consequences. The Tumult under *Wat Tyler*, consisted of Persons of the lowest Rank only, and was at first inconsiderable, yet in a few Days he got himself at the Head of near 100,000 Men, seized upon, and ransacked the City of *London*, obliged the Tower to surrender, tho' it was then garrison'd with 12,000 Men, burnt many Palaces and fine Houses, put to Death many Noblemen and Gentlemen, and would probably have put the King himself to Death, and entirely overturned our Government, if a very remarkable sort of Providence

dence had not intervened. Do not we know that many Governments have been overturned, even the Government of the great *Turkish* Empire was but lately overturned by a Tumult, in which none but the very lowest sort of People were at first concerned. The chief End of a Parliamentary Enquiry is not to discover, or to punish the Persons concerned in any Tumult; it is the Conduct of the Magistrates where such Tumults have happened, that we are principally to enquire into; and if upon such Enquiry it should appear, that the Tumult was occasioned by any oppressive or imprudent Behaviour, or by any Neglect or Cowardice in them, we ought to remove, to censure, or to punish such Magistrates according to the Heinousness of their Crime. Such an Enquiry, and such an Issue of an Enquiry, will satisfy the People, it will remove the Cause of Tumults, and consequently will prevent them for the future; whereas, if we employ ourselves solely in discovering and punishing the Rioters, we do not remove but increase the Cause of Tumults; we shall render the People more discontented than they were; the Severity of the Punishment may sear up the Wound for a Time, but, my Lords, it will not be healed, it will fester, and endanger the total Dissolution of the political Body.

My Lords, whatever the Opinion of other Lords may be, I shall always be of Opinion, that there is a very great Difference between a Magistrate's being assisted in the Execution of his Office by the Posse of the County, and his being assisted by a Body of regular Troops. In the first Case, the Magistrate is assisted by the People only, and the People, notwithstanding the Obligation they are by Law under to answer his Call, will never assist him in oppressing the People. If they refuse, they know they must be tried by their Country, and they know their Country will never condemn them for refusing to assist in oppressing their Country. But with respect to our Army, as it is now regulated by the Mutiny-Bill, the Case is quite different, they are now really a Body quite distinct from the People; when they are called to the Assistance of the Civil Magistrate, they are not called as the King's Subjects, but as the King's Soldiers, and as they are quite distinct from the People, they may very probably assist in oppressing the People: Nay, my Lords, they must assist; if they refuse, if they disobey their Orders, they are not to be tried by their Country, they are to be tried by the Martial Law, and their Punishment, instead of Fine and Imprisonment, is immediate Death; they may that Instant be tried and condemned by a Court-martial, and shot to Death upon the very Spot where they dared to disobey their Orders; for this Reason they always will be, and always have been assisting in destroying the Liberties, and oppressing the People of every Country, where their Superi-

Annore. Geo. II. 1736-7. ors have thought fit to employ them for such wicked Pur-  
poses.

From hence your Lordships must see the Difference between a civil Magistrate's being assisted by the Posse of the County, and his having a Body of regular Troops always at Command. In the first Case, he must, in all his Measures pursue Justice and Equity, he must even study the Humours and Inclinations, and court the Affections of the People; because, upon them only he can depend for the Execution of his Orders as a Magistrate, and even for his Safety and Protection as a private Man; but when a civil Magistrate knows that he has a large Body of regular, well-disciplin'd Troops at Command, he despises both the Inclinations and the Interest of the People; he considers nothing but the Inclinations and the Interest of the Soldiers, and as those Soldiers are quite distinct from the People, as they do not feel the Oppressions of the People, and are subject to such arbitrary Laws and severe Punishments, they will generally assist and protect him in the most unjust and oppressive Measures; nay, as the Interests of the Soldiers are always distinct from, and sometimes opposite to the Interests of the People, a civil Magistrate, not otherwise oppressive in his Nature, is sometimes obliged to oppress the People in order to humour and please the Army.

To imagine, my Lords, that we shall always be under a civil Government as long as our Army is under the Direction of the civil Magistrate, is to me something surprizing. In *France*, in *Spain*, and many other Countries, which have long been under an arbitrary and military Government, they have the outward Appearance of a civil Government; even in *Turkey*, they have Laws, they have Lawyers, they have civil Magistrates, and in all Cases of a domestic Nature, their Services are under the Direction of the civil Magistrates; but, my Lords, we know, that in all such Countries the Law, the Lawyers, and the Civil Magistrates, speak as they are commanded by those who have the Command of the Army. Their Lawyers have often occasion to make the same Speech that one of our Judges made to *Michael Pole*, Earl of *Suffolk* in *Richard the III's* Reign, who, upon signing it as his Opinion, that, *The King was above the Laws*, said, ——— *If I had not done this, my Lord, I should have been killed by you; and now I have done it, I will deserve to be hanged for Treason against the Nobles of the Land.*

I am afraid, my Lords, some of our civil Magistrates, at least those of an inferior Degree, begin to put too great Confidence in the having a military Force at their Command, and therefore make a little too free with the lower Sort of People, or at least do not take proper Measures for reconciling the People, in a good-natured and peaceable Manner,

Manner, to the Laws of their Country : A Man who has Anno 10. Geo. II.  
Power is but too seldom at the Pains to use Argument. It has  
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been granted, the People rarely become tumultuous but when they are oppressed, or are made believe they are oppressed ; if any Man has either by writing, or speaking, directly or ironically, endeavoured to make them believe so, it is the Business of our Magistrates to inform them better, and to punish the Defamers of our Government ; for such Criminals may be punished as the Laws now stand, unless we suppose the People generally disaffected, which God forbid ; and if any Magistrate has been oppressive, or deficient in his Duty, it is the Duty of this House to enquire into it, and to punish the Offender ; but this can be done only by a particular Enquiry. The Law mentioned by the noble Duke, I mean the Law against Gin, is a strong Argument for such an Enquiry. I believe every one of your Lordships was afraid that Law could not be carried into Execution without occasioning Riots and Tumults ; I wish that pernicious Liquor may not still get the better of the Legislature ; but the quiet Manner in which the Law has been hitherto carried into Execution, shews how willing the People are to submit to any Regulation, if proper Methods be taken to make them understand it, and to prevent the Designs of those who may be, by Nature or Interest, led to oppose it in a seditious Manner. The good Success of the Measures taken with respect to the enforcing that Law, is, in my Opinion, a strong Proof of some Crime or Neglect in the Magistrates at every one of those Places where any Tumult has happened, and therefore I shall be for enquiring in a particular Manner into the Circumstances and Causes of every one of those Tumults.

The Earl of *Scarborough* spoke next, pretty much to the Earl of *Scar-*  
same Purport, with what was said by the Duke of *Newcastle* <sup>*borough*</sup>.  
and the Lord *Hardwick* ; and then the Lord *Carteret* stood  
up again, and spoke in Substance thus.

My Lords, since your Lordships have done me the Ho- The Lord Car-  
nour to take so much Notice of what I before hinted to you, <sup>*teret*</sup>.  
and since every Lord who has spoke upon the Subject seems to be of Opinion, that some sort of Enquiry ought to be made into the Tumults or Riots that have happened, I will now take upon me to make some Motions for that Purpose, because I find no other Lord has yet attempted it.

For my Part, my Lords, I do not think it possible to obtain any Satisfaction for our selves, or to give any Satisfaction to the Nation, by a general Enquiry ; and if we make any particular Enquiry, I think we ought to begin with that Riot which was in itself the most wicked and atro-

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cious. That the Riot at *Edinburgh* was so, I believe every one of your Lordships will agree, and therefore the first Motion I shall make, is, That those who were the Magistrates of *Edinburgh* at the Time that Riot happened, at the Time, I mean, when *Porteous* was murdered by the Mob, may be ordered to attend this House. I do not know what sort of Magistrates that City has, or by what Names they are called, but I hope some of the Lords of that Country will assist me in forming my Motion in proper Terms. If your Lordships agree to that Motion, I shall then make you several other Motions, which I take to be necessary Preliminaries for an Enquiry into that Affair.

I shall not take upon me at present so much as to guess or insinuate where the Whole or any Part of the Guilt lay upon that Occasion; but I am persuaded it will appear not to have lain wholly in Persons of the meanest Rank; however, lie where it will, if your Lordships agree to enquire into it, I am sure you will go through the Enquiry with that Dignity, Wisdom, and Impartiality, which have always attended, and have added Weight to all the Proceedings of this House. I am sure no guilty Person, let his Rank or Quality be what it will, can escape your Lordships Penetration, or avoid your Justice; and therefore from such an Enquiry I propose great Satisfaction to my self; and I hope a sufficient Satisfaction to the whole Nation.

The Earl of *May*.

The Earl of  
*May*.

My Lords, as I am of Opinion that the late Tumults ought to be enquired into, and some Measures taken for preventing the like in Time to come, I am so far from being against a particular Enquiry into that atrocious Riot and cruel Murder that happened at *Edinburgh*, that I shall not only second the noble Lord in all the Motions proper for that Purpose, but I shall give him all the Assistance I can towards putting those Motions in the most proper Terms. With respect to the Magistrates of the City of *Edinburgh*, I shall beg leave to inform your Lordships, that that City, like the rest of the Cities in *Scotland*, is governed by its Magistrates and Town-Council, who, together, make such Laws and Regulations as they think proper for the good Government of the City; but the executive Part of their Government consists intirely in the Magistracy, which is composed of a Provost, four Bailiffs, a Treasurer, and a Dean of *Guild*. As for the Treasurer, his Business consists chiefly in managing the Estate and Treasure of the City; and the Dean of *Guild*'s chief Business is in looking after the Buildings, neither of whom could, by Means of their Office, have any thing to do with the Mob; and therefore the only proper Persons for

for your Lordships to call before you, are those who were the Provost and four Bailiffs of that City, at the Time the late Tumult happened there.

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That the late Tumult at *Edinburgh* was a most daring Insult upon Government, and that the Murder committed at that Time was one of the most flagitious, and attended with the most aggravating Circumstances, I shall, my Lords, most readily admit; yet I am surprized to hear the least Insinuation made, as if the City's Charter ought to be taken from them on that Account. It is true, Cities or Corporations may, perhaps, by the Severity of Law, be made to forfeit their Charter, when they have been guilty of any very heinous and very extraordinary Misbehaviour; and in former Reigns we know that many *Quo Warranto's* have been issued for that Purpose: But the taking Advantage of such Forfeitures, and stretching the Law to its utmost Rigour upon such Occasions, has always been deemed oppressive, and has never, or but very seldom, been done but by those who were pursuing arbitrary Measures; for it is really, in some respect, punishing the Innocent for the Sake of the Gully. For this Reason, I hope no such Thing will ever be attempted in his present Majesty's Reign; but if such a Thing were to be attempted, there is not the least Foundation for attempting it with respect to the City of *Edinburgh*, on account of the late Tumult there; for that Tumult was far from being the Act of the City or Citizens: On the Contrary, at least so far as yet appears, there were none concerned in it, but a few of the very Scum of the People: It does not yet appear that there was so much as one Freeman of the City concerned in it; and therefore it would be extremely hard to punish the whole Inhabitants of that populous City with a Loss of all their Privileges as Citizens, on account of any Irregularity in which they cannot be said to have had the least Concern.

The present Case of the City of *Edinburgh* is vastly different from the Case of the City of *Cambridge* in the Reign of *Richard II.* The City of *Cambridge*, my Lords, had in a manner joined in those Insurrections which happened about the same Time with that Insurrection headed by *Wat Tyler*; the whole Citizens assembled, not in a tumultuous, but in a hostile, rebellious Manner, with their Mayor and other Magistrates at their Head, went and assaulted the University, broke up their Treasury, burnt their Charters and many valuable Records, and compelled the Chancellor and Members of the University, in a solemn Manner, under their Common-seal, to release, to the Mayor and Burgesses of *Cambridge*, all Liberties and Privileges enjoyed by that University. For this hostile and rebellious Manner of Proceeding,

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the Parliament declared, they had forfeited their Charter, and many of those Liberties and Privileges which were taken from them were granted by that King to the University ; so that even this Forfeiture was but a sort of *Lex Talionis*. But there is not the least Resemblance between this Case and the present Case of the City or Citizens of *Edinburgh* ; and if there were, I hope none, or very few, of the Proceedings of that Reign will be allowed to be a good Precedent in this ; for the very same King, in a few Years after, stripped the City of *London* of all her Privileges, and took away her Charter, on account of a Mob that happened in the City at that Time.

The removing of the Courts of Justice, is, I believe, my Lords, a sort of Punishment his Majesty has in his Power to inflict ; but it would be extremely inconvenient both to the Judges and Suitors, who are often obliged to have Recourse to the public Records of the Kingdom, which are all lodged at *Edinburgh*, and which, I believe, cannot be removed, without an Act of Parliament, nor, even in that Case, without a very great Expence. But suppose the Courts of Justice could be easily removed, the Punishment would be of the same Nature with the other ; it would be a punishing of the Innocent for the Sake of the Guilty, and it would be a Punishment I remember no Precedent for, but in the Reign I have mentioned, in the Reign of *Richard II.* who, upon his Quarrel with the City of *London*, removed the Courts of Justice to *York* ; which was one of the Steps to that arbitrary Power he afterwards assumed.

I shall not, my Lords, take upon me to affirm that the Magistrates of *Edinburgh* were entirely innocent ; whether they were guilty or innocent will best appear from your Lordships Enquiry ; but, granting that it should appear, that they were negligent of their Duty, or even that they connived with the Mob, and in a manner consented to the Murder of *Porteous*, can that be a Reason for punishing the City, or for stripping the innocent Citizens of their Privileges ? As that Tumult and Murder was a high Indignity put upon the Crown, it is hardly possible to suppose it was the Act of the Citizens in general. That City has always been remarkable for their Attachment to our present happy Establishment, and has, upon all Occasions, testified their Respect and their Affection for the present Royal Family. In the Year 1715, they shewed it in a very signal Manner ; they appeared with great Unanimity in Arms, and were ready to have gone upon the most desperate Attempts, in Defence of our present Establishment ; and it must be admitted by every one, who knows the Circumstances of Affairs in that Part of the Kingdom

Kingdom at that Time, that the Loyal Behaviour of the City of *Edinburgh* contributed greatly to repress the unnatural Rebellion which had then broke out, and had come to a very extraordinary Height. For which I should think, my Lords, that even suppose a great Number of the Citizens should appear to have been misled, and to have been concerned in the late Tumult, yet the former Behaviour of the City, its Merit upon former Occasions, ought to be admitted as a sufficient Plea against our treating the City, at least, with the utmost Severity either Law or Justice will admit of.

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Whatever Neglect, whatever Crime the Magistrates of *Edinburgh* may have been guilty of, I believe, when your Lordships come to enquire into the Causes of that Tumult at *Edinburgh*, you will find, that the chief Cause of that and every other Tumult that has happened in the Kingdom, proceeds neither from any Neglect, nor any Oppression in the civil Magistrate, but from a restless, disaffected Party, who are continually fomenting such Tumults, in order to make their own Use of them at foreign Courts, and to represent the People of this Island as generally disaffected to the present Government. This, 'tis well known, is the uninterrupted Endeavour of that Party, and their Success in this wicked Design, is, in a great Measure, owing to the many seditious Libels and Pamphlets spread about daily, and dispersed with great Industry through every Part of the united Kingdoms. In these Libels and Pamphlets, the Authors, under the specious Pretence of Liberty, and an unfeigned Regard for the Rights of the People, take Occasion to persuade the People, that their Liberties are in Danger, that they are oppressed, and that they ought to throw off all Respect for, or Obedience to the Laws of their Country; but, my Lords, the true Design, the secret Aim of such Writings and such Authors may be easily perceived: They know the Transition is easy, from no Government at all, to the Government they wish to see established; and that the less Respect the People have for the present Government, the more easy it will be to prevail with them to submit to the other. This I say, my Lords, is easily perceived by Men of Knowledge and Sense, but it is not so easily seen through by the generality of Mankind, which is the Reason that so many of them are caught in the Snare; and as I am convinced that this will, upon Enquiry, appear to be the chief Reason of all our Riots and Tumults, therefore I shall most readily join with the noble Lord, in any Motions for enquiring into all or any one of them.

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Motions made by  
the Lord Carter-  
et.

The Lord *Carteret* then made the following Motions, which were all agreed to in the Committee, and being the same Day reported, were agreed to by the House, *viz.* To resolve that it is the Opinion of this Committee,

1<sup>st</sup>, That the Provost and four Bailiffs of the City of *Edinburgh*, in the Year 1736, be ordered to attend this House.

2<sup>dly</sup>, That the Person commanding the City-Guard, at the Time of the Riot in which Captain *Porteous* was murdered, be ordered to attend this House.

3<sup>dly</sup>, That the Officer, commanding in chief his Majesty's Forces in that Part of *Great-Britain* called *Scotland*, and residing there at the Time of the said Riot, be ordered to attend this House.

4<sup>thly</sup>, That an authentic Copy of the Trial of Capt. *Porteous*, and all the Proceedings relating thereunto, be laid before this House.

5<sup>thly</sup>, That an humble Address be presented to his Majesty, that he will be graciously pleased to give Order, that the Accounts transmitted hither of the Murder of Capt. *Porteous*, and what passed thereupon, together with the Orders and Directions sent from hence relating thereunto; as likewise a Copy of the Reprieve of the said Captain, granted by her Majesty, as Guardian of the Kingdom, be laid before this House.

6<sup>thly</sup>, That the Attendance of the several Persons aforementioned be on this Day Month.

His Lordship's  
Motion for settling  
100,000 *l.*  
per Annum, on  
the Prince of  
*Wales*.

Feb. 23. a Motion was made by Lord *Carteret*, for the settling 100,000 *l.* per Annum out of the Civil List, on the Prince of *Wales*, which gave Rise to a vehement Debate, of the same Nature of that which occurred on the same Question in the House of Commons, and which is to be found in *Chand. Hist. Ann. 10. Geo. II. 1736-7. P. 277. to 340.*

Rejected.

The Division upon the Question was

Not Contents	79	} 103	Contents	28	} 40	Majority 63.
Proxies	24		Proxies	12		

On which Occasion was entered the following Protest the same Day.

Protest thereon.

THE House being moved, That an humble Address be presented to his Majesty, to express the just Sense of this House, of his Majesty's great Goodness and tender Regard for the lasting Welfare and Happiness of his People, in the Marriage of his Royal Highness the Prince of *Wales*; and

and as this House cannot omit any Opportunity of shewing Anno 10. Geo. II.  
 their Zeal and Regard for his Majesty's Honour and the Pro-  
 sperity of his Family, humbly to beseech his Majesty, That, 1736-7.  
 in Consideration of the high Rank and Dignity of their Royal  
 Highnesses, the Prince and Princess of *Wales*, and their  
 many eminent Virtues and Merits, he would be graciously  
 pleased to settle 100,000 *l.* a Year on the Prince of *Wales*,  
 out of the Revenues cheerfully granted to his Majesty (for  
 the Expences of his civil Government, and better support-  
 ing the Dignity of the Crown, and for enabling his Majes-  
 ty to make an honourable Provision for his Family) in the  
 same Manner his Majesty enjoyed it before his happy Acces-  
 sion to the Throne: And also humbly to beseech his Majesty  
 to settle the like Jointure on her Royal Highness the Prin-  
 cess of *Wales*, as her Majesty had, when she was Princess  
 of *Wales*; and to assure his Majesty, that this House will  
 be ready to do every thing on their Part, to perform the  
 same, as nothing will more conduce to the strengthening of  
 his Majesty's Government, than honourably supporting the  
 Dignity of their Royal Highnesses, from whom we hope to  
 see a numerous Issue, to deliver down the Blessings of his  
 Majesty's Reign to the latest Posterity.

The Duke of *Newcastle*, by his Majesty's Command, made  
 the like Signification to the House of the Message sent by  
 his Majesty in Writing to the Prince of *Wales*, and of the  
 Report of his Royal Highness's verbal Answer, as is printed  
 in the Votes of the House of Commons of the 22d instant,  
 (to be found in *Chand. Hist.* in the Passages last quoted.)

And the same being read by the Lord Chancellor, after  
 long Debate upon the foregoing Motion,

The Question was put, Whether such Address shall be pre-  
 sented to his Majesty?

It was resolved in the Negative.

#### *Dissentient.*

1. **B**ecause that this House has an undoubted Right to  
 offer, in an humble Address to his Majesty, their  
 Sense upon all Subjects, in which this House shall conceive  
 that the Honour and Interest of the Nation are concerned.

2. Because the Honour and Interest of the Nation,  
 Crown, and Royal Family, can be concerned in nothing  
 more, than in having a due and independent Provision  
 made for the first-born Son, and Heir apparent to the  
 Crown.

3. Because, in the late King's Reign, 100,000 *l.* a Year,  
 clear of all Deductions whatsoever, was settled upon his pre-  
 sent

Annoro. Geo. II.  
1736-7.

sent Majesty when Prince of *Wales*, out of a Civil List not exceeding 700,000 *l.* a Year.

4. Because his present Majesty had granted him by Parliament several Funds to compose a Civil List of 800,000 *l.* a Year, which we have very good Reason to believe bring in at least 900,000 *l.* and are more likely to encrease than to diminish.

5. Because out of this extraordinary and growing Civil List, we humbly conceive his Majesty may be able to make an honourable Provision for the rest of his Royal Family, without any Necessity of lessening that Revenue which, in his own Case, when he was Prince of *Wales*, the Wisdom of Parliament adjudged to be a proper Maintenance for the first-born Son, and Heir apparent of the Crown.

6. Because it is the undoubted Right of Parliament to explain the Intention of their own Acts, and to offer their Advice in Pursuance thereof. And tho', in the inferior Courts of *Westminster-hall*, the Judges can only consider an Act of Parliament according to the Letter and express Words of the Act, the Parliament itself may proceed in a higher Way, by declaring what was their Sense in passing it, and on what Grounds, especially in a Matter recent, and within the Memory of many in the House, as well as out of it.

7. Because there were many obvious and good Reasons, why the Sum of 100,000 *l. per Annum* for the Prince, was not specified in the Act passed at that Time, particularly his being a Minor, and unmarried. But we do apprehend, that it is obvious that the Parliament would not have granted to his Majesty so great a Revenue above that of the late King, but with an Intention that 100,000 *l.* a Year should at a proper Time be settled on the Prince, in the same Manner as it was enjoyed by his royal Father when he was Prince of *Wales*: And his Royal Highness being now thirty Years old, and most happily married, we apprehend it can no longer be delayed, without Prejudice to the Honour of the Family, the Right of the Prince of *Wales*, and Intention of the Parliament. And as in many Cases the Crown is known to stand as Trustee for the Public, upon Grants in Parliament; so we humbly conceive, that in this Case, according to the Intention of Parliament, the Crown stands as Trustee for the Prince, for the aforesaid Sum.

8. Because we do conceive, that the present Princess of *Wales* ought to have the like Jointure that her present Majesty had when she was Princess of *Wales*, and that it would be for the Honour of the Crown, that no Distinction whatsoever should be made between Persons of equal Rank and Dignity.

9. Because

9. Because we apprehend, that it has always been the Policy of this Country, and Care of Parliament, that a suitable Provision, independent of the Crown, should be made for the Heir apparent, that by shewing him early the Ease and Dignity of Independence, he may learn by his own Experience, how a great and free People should be governed. And as we are convinced in our Consciences, that if this Question had been passed in the Affirmative, it would have prevented all future Uneasiness that may unhappily arise upon this Subject, by removing the Cause of such Uneasiness, and giving his Royal Highness what we apprehend to be his Right; we make use of the Privileges inherent in Members of this House, to clear ourselves to all Posterity, from being concerned in laying it aside.

10. Lastly, we thought it more incumbent upon us to insist upon this Motion, for the Sake of this Royal Family; under which alone we are fully convinced we can live free, and under this Royal Family we are fully determined we will live free.

*Winchelsea and Nottingham, Berkshire, Cobham, Chesterfield, Cardigan, Marlborough, Carteret, Bridgewater, Bedford, Weymouth, Bathurst, Coventry, Ker, Suffolk.*

There happened likewise a Debate in relation to Form, occasioned by the former Debate, which being something curious, we shall give a short Account of it.

The Duke of *Newcastle*, who was the first that spoke in that House against the Motion, concluded his Speech with acquainting their Lordships, that he had a Message from his Majesty to communicate to them; and after reading it in his Place, the same Message which had before been communicated to the House of Commons, he delivered to the House, and the Earl of *Stratford* moved it might be read a second Time by the noble Lord on the Wool-sack; whereupon the Lord *Carteret* stood up and said, That, by the constant Form and Method of Proceeding, it had always been deemed inconsistent with the Honour and Dignity of that House, to have any Papers or Writings read a second Time by the noble Lord on the Wool-sack, except Speeches or Messages made or sent by his Majesty in Writing directly to that House: That as for all other Writings, or Papers, delivered or communicated at any Time to that House, if they were to be read a second Time, the constant Custom had been, to have

Debate about reading his Majesty's Message. Duke of Newcastle.

Earl of Stratford. Lord Carteret.

1736-7.

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them

Ann<sup>o</sup>. Geo. II. them read a second Time by the Clerk at the Table. That he was not against having that Paper read a second Time, which the noble Duke had, by his Majesty's Command, communicated to them; but as it was no Message, in Writing from his Majesty directly to that House, but only an Account of a Message his Majesty had been pleased to send to his Royal Highness the Prince of *Wales*, and of the Answer his Royal Highness had returned to that Message, therefore he thought it ought to be read a second Time, not by the noble Lord on the Wool-sack, but by the Clerk at the Table.

Lord *Delawar*.  
Earl of *Chol-*  
*mondeley*.  
Earl of *Ilay*.

To which it was answered by the Lord *Delawar*, the Earl of *Cholmondeley*, and the Earl of *Ilay*, in Substance, That as the Paper communicated to them was of the utmost Importance, and so very long, that no Lord of that House could judge rightly about it, upon hearing it only once read, it would be absolutely necessary to have it read a second Time. That if any foreign Potentate should send a Letter or Memorial to his Majesty, and he should think fit to communicate the same to that House, every one of their Lordships had a Privilege to desire it might be read a second Time, before the House could enter into any Consideration relating to it; and as the Message then delivered to them in Writing, was of as great Importance as any such Letter or Memorial could well be, therefore it ought to be read a second Time, before they proceeded to take it into their Consideration, especially, as the second Reading had been moved for by one of their Lordships. That the noble Duke had told them, he had express Orders from his Majesty to communicate it to them, therefore it ought to be considered as a direct Message from his Majesty to that House, and consequently, as it was in Writing, it ought to be read a second Time, and that second Reading ought to be by the noble Lord on the Wool-sack, and not by the Clerk at the Table.

Lord *Batburſt*.

To which it was replied by the Lord *Batburſt*, That the Question was not, whether or no the Message should be read a second Time, but whether it should be read a second Time by the Lord on the Wool-sack, or by the Clerk at the Table? As to which, he would desire no other Argument, for convincing him that it ought to be read a second Time by the Clerk at the Table, than that which had been mentioned by the noble Lords who seemed to be of a different Opinion; for if his Majesty should receive a Letter, Memorial, or other Writing, from any Potentate in *Europe*, and should think fit to communicate it to the House, surely the Lord, who in that Case might be honoured with his Majesty's

ty's Commands, would tell the House he had express Orders from his Majesty to communicate such a Letter, Memorial or Writing, to the House; and yet in that Case, such a Letter, Memorial, or Writing, would not be read a second Time by the Lord on the Wool-sack, it would be contrary to Precedent, and inconsistent with the Dignity of the House to do so; it would be read a second Time only by the Clerk at the Table, and then reported to the House by the Lord on the Wool-sack: That this had been their constant Custom in all such Cases; and the Reason was plain, because in such Cases there is no Message in Writing sent by his Majesty directly to the House; the only direct Message from his Majesty to the House, is a verbal Message, and that verbal Message is delivered by the noble Lord, when he tells them he has Orders from his Majesty to communicate such a Writing or Paper to them. That if his Majesty should order a long Treaty or Negotiation between him and a foreign Prince to be communicated to the House, there would be the same Reason for having it read a second Time by the Lord on the Wool-sack, as there was, or could be pretended, for having his Majesty's Message to the Prince, and the Prince's Answer, read a second Time by the Lord on the Wool-sack; and as no such thing had ever been done in the former Case, therefore he thought it ought not to be done in the latter.

Anno 10. Geo. II.  
1736-7.

This is the Substance of what was said upon this Head; but the Question was not fully debated; for as many seemed to be impatient to have the Message read a second Time, the Lords who were for having it read only by the Clerk at the Table, submitted without a Division, and it was read a second Time by the noble Lord on the Wool-sack; after which they proceeded in the Debate upon the chief Motion; and at the End of that Debate, the Earl of *Strafford*, who was the last that spoke, said, That, altho' he was, in his Opinion, against the Motion, and therefore obliged to differ from those with whom he had generally agreed, and would again agree, he believed, in all Matters where the Constitution or Liberties of his Country were concerned, neither of which, he thought, had any Concern in the Question then before them, yet, he thought it would be better, and more decent, to wave putting any Question upon the Motion; for which Reason, if any of their Lordships appeared to be of his Opinion, he would move, to adjourn till next Morning; but as no Lord seemed inclined to second this Motion, his Lordship waved making it; and the Question being put upon the principal Motion, it was carried in the Negative, as above related.

Earl of *Strafford*.

ANNO 10. Geo. II.  
1736-7.

The Speakers were as follow, *viz.*

For the Motion. Lord *Carteret*, Lord *Gower*, Duke of *Bedford*, Duke of *Marlborough*, Earl of *Chesterfield*, Lord *Batburſ*, Earl of *Westmoreland*.

Againſt the Motion. Duke of *Newcaſtle*, Lord Viſc. *Harrington*, Earl of *Finlater*, Earl of *Ilay*, Earl of *Scarborough*, Lord High Chancellor, Earl of *Stratford*.

Proceedings  
in relation to  
the Murder of  
Captain *Porteous*.

*Thursday, March 3*, the Duke of *Newcaſtle* preſented to the Houſe, according to the fourth and fifth Reſolutions of *Feb. 10.* an authentic Copy of the Trial of Captain *Porteous*, and all the Proceedings relating thereunto; and alſo the Accounts tranſmitted hither of the Murder of Captain *Porteous*, and what paſſed thereupon; together with the Orders and Directions ſent from hence relating thereunto; as likewiſe a Copy of the Reprieve of the ſaid Captain, granted by her Maſteſty as Guardian of the Kingdom. And on *Thursday, March 10*, the ſeveral Perſons attended according to Order, and were called to the Bar and ſworn: After which the Houſe reſolved itſelf into a Committee, to conſider of the Affair, and agreed to fifteen ſeveral Queſtions or Interrogatories, upon which the Lord Provost and four Bailiffs of the City of *Edinburgh* in the Year 1736, were examined. The ſame Day a Meſſage was ſent to the Houſe of Commons, deſiring they would give Leave to Lieutenant-general *Wade*, and *Patrick Lindſay*, Eſq; Members of that Houſe, to attend, to be examined in relation to the Murder of *Porteous*; and Major *Poole*, whoſe Name had been mentioned in the aforeſaid Examination, was ordered to attend on *Wednesday* then next.

On the 16th, *Thomas Young*, Treafurer of the City of *Edinburgh* in the Year 1736, whoſe Name had likewiſe been mentioned in the aforeſaid Examination, was ordered to attend, if in Town; and on the 17th, the Houſe having, again, reſolved itſelf into the ſaid Committee, agreed to eleven Queſtions or Interrogatories, upon which Captain *Lynd*, who was Captain of the City-Guard of *Edinburgh*, the Night *Porteous* was murdered, was examined; after which the Lord Provost was again called in, and examined as to any, and what Endeavours had been uſed by him, to diſcover thoſe concerned in the Murder of *Porteous*; and as to ſome other Matters, which had occurred after that Riot; and the above-mentioned *Patrick Lindſay*, Eſq; having had Leave from the Houſe of Commons, did attend, and was examined as to his Knowledge, of what happened relating to this Affair; as was alſo General *Moyle*, Commander in chief of his Maſteſty's Forces in *Scotland*, at the Time this Affair happened.

On

On the 18th, Colonel *Duroours*, Lieutenant-Colonel to the Regiment of Foot commanded by Lieutenant-General *Wbe-*  
*them*, was ordered to attend, his Name having been mentioned in the former Examinations; and the same Day a Motion was made by Lord *Lovell*, That the Lord Justice Clerk of Scotland might be ordered to attend. The Reason of this Motion was founded upon a Letter of Lieutenant-General *Wade's*, then on their Table, from which it appeared, That it would be necessary for them to examine the Lord Justice Clerk, and as the Session would not probably last long, they ought to send for him as soon as possible; because the sooner they sent for him, the sooner they would have him: To which it was added, That it appeared likewise from the Trial of *Porteous*, then on their Table, that it would be necessary to examine the Lord Justice Clerk, who was the chief and presiding Judge upon that Trial.

Anno 10. Geo. II.

1736-7.

Lord *Lovell's*  
 Motion that the  
 Lord Justice  
 Clerk of Scotland  
 might attend the  
 House.  
 Debate thereon.

To this it was answered, That the ordering of any particular Gentleman to attend, would be a sort of Impeachment upon his Character, which was a Slur they ought not to throw upon any Gentleman, without some Appearance of Guilt; for, as they would scorn to screen any Man, against whom there appeared the least Suspicion, so they would scorn to attack any Man in an indirect Manner. That, as to the Letter upon their Table, they could not properly make it a Foundation for any Order, till they had examined General *Wade* himself, as to the Contents; and as to the Trial of *Porteous*, the Lord Justice Clerk was but one, of four or five Judges then upon the Bench, and ought not therefore to be made to answer singly for any Part of that Trial.

The Motion was supported by the Duke of *Montagu*, Lord *Carteret*, and Lord *Bathurst*; and opposed by the Earl of *Illy*, the Lord *Hervey*, the Duke of *Newcastle*, the Duke of *Argyle*, and the Earl of *Warwick*; and the Duke of *Newcastle* having moved to adjourn, the Question was put, and carried for adjourning.

Contents present	45	} 65	Not Contents present	39	} 48
Proxies	20		Proxies	9	

Though the other Motion therefore was not then agreed to, yet as the Lord Justice Clerk was the chief Officer of State in Scotland, at the time of *Porteous's* Murder, and consequently the chief Person entrusted with the Civil Government of the Country; and as it appeared by all the Examinations, that he was neither in Town when that Mob happened, nor came to Town when he was apprized of the Tumult, tho' very near to it, it is probable this Motion would have been revived, and agreed to as soon as General *Wade* should be examined. However, on Monday following the Duke of *Newcastle*

Duke of *Montagu*,  
 Lord *Carteret*,  
 Lord *Bathurst*,  
 Earl of *Illy*,  
 Lord *Hervey*,  
 Duke of *Newcastle*,  
 Duke of *Argyle*,  
 Earl of *Warwick*.



Ann<sup>o</sup> 10. Geo. II. *castle moved, That the aforesaid Lord Justice Clerk, together with the Lord Dun and the Lord Rosslyn, the two senior Judges of that Court, should be ordered to attend; which Motion was agreed to, and they were ordered to attend accordingly on April 21.*

1737.

Scotch Judges  
sent for.

Lieutenant-General *Wade*, and several others were afterwards examined, and the Committee having considered their Examinations, came to several Resolutions, which were reported and agreed to on *Friday, April 13*; whereupon *Alexander Wilson, Esq;* the aforesaid Lord Provost of *Edinburgh*, was ordered to be taken into the Custody of the Gentleman-Usher of the Black-Rod; (but upon *April 19*, following, he was admitted to Bail, in order to prepare himself for being heard by his Counsel, as after-mentioned;) and the following Bill was ordered to be brought in, *To disable the said Alexander Wilson, Esq; from taking, holding, or enjoying any Office or Place of Magistracy in the City of Edinburgh, or elsewhere in Great Britain; and for imprisoning the said Alexander Wilson; and for abolishing the Guard kept up in the said City, commonly called The Town-Guard; and for taking away the Gates of the Nether-Bow-Port of the said City, and keeping open the same.*

A Copy of Por-  
tous's Bill.

WHEREAS upon *Tuesday the 7th Day of September*, in the Year of our Lord 1736, there was a most seditious and outrageous Riot in the City of *Edinburgh*, in that Part of *Great Britain* called *Scotland*, notoriously concerted and carried on by great Numbers of wicked, disorderly and blood-thirsty Persons, who did, with open Force and Violence, seize the Arms of the City-Guard, possess themselves of the City-Gates, and by setting Fire to, and breaking open the Door of the *Tolbooth* of the said City, did unlawfully and audaciously rescue and set at large several Criminals therein confined: And whereas Captain *John Portous*, then a Prisoner there under Sentence of Death, but graciously reprieved by the Queen's most excellent Majesty, as Guardian of the Realm, was by the said Rioters in a cruel Manner dragged from the said Prison, and most barbarously hanged by the Neck, and murdered, in manifest Violation of the public Peace, in Defiance and Subversion of legal Government, in high Contempt of our Sovereign Lord the King, and his Laws, and to the most presumptuous and unparallel'd Obstruction of the Royal Mercy: And whereas, for some Time before the committing of the said Murder and Riot, it was commonly reported in the said City of *Edinburgh*, that some atrocious Fact would be attempted, which, by proper Care in the Magistrates, Citizens and Inhabitants of the said City, might have been prevented; not-

notwithstanding which *Alex. Wilson*, Esq; then actually resident Anno 10. Geo. II. in the said City, and now Provost of the said City, and fully apprised of the said wicked Design, did not take any Precautions to prevent the said Murder and Riot, nor use the proper or necessary Means to suppress the same, or to preserve the Peace of the said City; or, after the Perpetration of the said Fact, to discover, apprehend or secure the Authors, Actors or Abettors thereof, in manifest Violation of the Trust and Duty of his Office of chief Magistrate of the said City; nor were any Means or Endeavours used by the Citizens and Inhabitants of the said City, to prevent or suppress the said notorious Riot, or to hinder the said inhuman and barbarous Murder, or to discover the Persons concerned therein, in order to bring them to Justice: Now, in order to express the highest Detestation and Abhorrence of the said Murder and Riot, and to the End that the said enormous Misbehaviours and Neglects of Duty, herein before mentioned, may not go unpunished, and that other Persons may not presume, through Hopes of Impunity, to be guilty of the like of the future: *Be it enacted* by the King's most excellent Majesty, by and with the Advice and Consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said *Alexander Wilson* be, and he is hereby, from and immediately after the passing this Act, disabled and made incapable to have, hold, exercise or enjoy the said Office of Provost of the said City of *Edinburgh*: And that he the said *Alexander Wilson* be, and he is hereby for ever hereafter, disabled, and render'd incapable, to have, hold, exercise, or enjoy any Office or Place of Magistracy in the said City of *Edinburgh*, or elsewhere in *Great Britain*.

And it is farther enacted by the Authority aforesaid, That a new Provost be immediately chosen in the room of the said *Alexander Wilson*, in the same manner, as if the said *Alexander Wilson* was naturally dead; and that he, the said *Alexander Wilson*, shall be detained and kept in close and safe Custody, without Bail or Mainprize during the Space of (one whole Year) to be accounted from the Day of passing this Act, in any Goal or Prison within the Kingdom of *Great Britain*, to the Custody of the Goaler or Keeper whereof the said *Alexander Wilson* shall from time to time be committed, in pursuance of this Act, by any Warrant under the Hand and Seal of any Secretary of State of his Majesty, his Heirs, or Successors, which Warrant or Warrants any Secretary of State for the Time being, is hereby authorised and empowered to make.

And whereas the said City of *Edinburgh* hath, for many Years past, kept up a military Guard, called the *Town-Guard*, which

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**Annoro. Geo II.** which upon the said late unhappy Occasion has appeared to be of no use : *And whereas*, for want of an open Communication between the said City, and a Place called the *Cannongate*, adjoining thereto, wicked and disorderly Persons are the more encouraged (especially in the Night, when the Gates of the *Nether-Bow Port* of the said City are shut) to attempt to commit Disorders and Riots in the said City : *And whereas* it is just and necessary, that the Power of keeping up the said Guard should be taken away, and that the said *Nether-Bow Port* should be kept open : *Be it further enacted* by the Authority aforesaid, That from and after the first Day of *July 1737*, the said military Guard, commonly called the *Town-Guard*, be taken away, and abolished, and no longer kept up ; any Law, Statute, Prescription, or Usage to the contrary in any wise notwithstanding : *And* that the then Provost and Bailiffs of *Edinburgh*, on, or before the said first Day of *July 1737*, shall cause the said Gates of the *Nether-Bow Port* to be taken down, and that the Communication between the said City and *Cannongate*, be for ever hereafter kept open, both by Night and by Day ; any Law or Usage to the contrary notwithstanding.

On the 4th of *April*, this Bill was read a first Time, and ordered to be read a second Time, but was not till *May* ; the Lord Provost, and the City of *Edinburgh*, being admitted to be heard by their Counsel against the Bill, upon its second Reading.

*Tuesday, April 26*, after several Lords had spoke for, and against the Sentence pronounced against *Porteous*, by the High Court of *Jusiciary* in *Scotland*, a Motion was made for declaring it erroneous.

Argument for the Motion by Lord *Carteret*, the Bishop of *Salisbury*, &c.

Lord *Carteret*,  
Bp. of *Salisbury*.

A Debate concerning the Sentence passed on *Porteous*.

My Lords, altho' it cannot be supposed that we have, or can have, all the Lights which Time and Circumstances may hereafter discover and manifest, with regard to the Trial of the unfortunate Captain *Porteous*, and the Sentence passed upon him ; yet I think, we have sufficient for shewing us, that That Sentence was extremely rigorous, to give it no worse a Name ; and, as it is an Affair, in which the Peace and Tranquillity of this Island, and the Safety of his Majesty's Subjects, are very much concerned, I am humbly of Opinion, we ought not to pass over that severe Sentence without some Censure.

In that Trial, my Lords, the first Thing that occurs to our Notice is, the interlocutory Sentence passed upon the Relevancy of the Libel, and for directing what Matters should

should be brought in Proof at the ensuing Trial ; with respect to which, there appears to me, at first View, two very material Objections. The first proceeds from an Error or Mistake, as I imagine, with regard to the Law of Scotland ; and, indeed, of every well-regulated Society in the World ; and the other is, in my Opinion, an evident Piece of Injustice done to the unfortunate Prisoner.

As to the first, my Lords, by that interlocutory Sentence they determined, ' That the Pannel, or Prisoner, having, at any of the Times and Places libelled, fired a Gun among the People assembled at the Execution, or having given Orders to the Soldiers under his Command, to fire, and thereupon, they, the Soldiers, or any of them, having accordingly fired ; and, upon the firing, either by himself or them, the Persons mentioned in the Indictment, or any of them, were killed or wounded ; or, the Pannel's being art or part of any of the aforesaid Crimes, are, *separatim*, relevant to infer the Pains of Law.' I do not pretend, my Lords, to be fully acquainted with the Laws of Scotland ; but from the Law of Reason, which I take to be the Law of every Country, and, I hope, is the Law of Scotland, I must think this Determination too general ; I think there ought to have been an Exception, with regard to his having been first attacked or assaulted by the Mob ; and, therefore, I must think these Words, or some such Words, ought to have been inserted ; *unless it should appear, that he or his Party were violently attacked or assaulted by the Mob, and brought into Danger of their Lives, or of being disabled from performing their Duty.*

I am sorry, my Lords, we should ever have occasion to employ a military Force, or any thing like a military Force, in the Execution of the Law, or in bringing any Criminal to condign Punishment ; but, in this Country, as well as in every other Country, the Populace are sometimes instigated by selfish and designing Men, to oppose the Distribution of Justice ; or, in some Cases, perhaps, to take upon themselves an usurped Power of distributing Justice ; and, when any such Case as either of these happens, it becomes necessary for the Magistrate to make use of a military Force, or something like it, in order to execute the Laws, or to protect his Majesty's innocent Subjects, who happen to be so unfortunate as to incur the Resentment of an enraged and unruly Populace. In either of these Cases, I hope, it will never be established as the Law of any Part of this Island, or any the Dominions belonging to it, that those who are called to the Assistance of the Civil Magistrate, shall be hanged for Murder, in case they should find them-

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elves under a necessity of firing upon those who violently attack or oppose them in the Execution of their Duty ; for if this were established, or supposed to be established, as the Law of the Kingdom, it would not only greatly encourage Tumults, and riotous Assemblies, but would make it impossible for the Civil Magistrate to suppress them, or to prevent whatever Mischief the Fury of a Mob, the Malice of private Men, or, perhaps the desire of Plunder might suggest. Even the Civil Magistrate himself would run the Risk, either of having his Brains knocked out by the Mob, or of being afterwards hanged by the Law, if he should take the proper Measures, or give to his Assistants the proper and the only effectual Order, for defending themselves and dispersing a riotous Assembly. For this Reason, as the Law permits the carrying of Fire-Arms to those who are called as Assistants to the Civil Magistrate, it must certainly, in some Cases, allow them to make the proper Use of those Arms ; and I cannot think any Case can happen more necessary for allowing them that Liberty, than when some of them are wounded, and their Bones actually broke, by the Stones thrown at them by the Mob ; which was the Case when that Accident happened, for which *Porteous* was condemned to die, by the Sentence now under our Consideration.

As I take it to be the Law of every Country, that neither the Civil Magistrate, nor any of his Assistants, shall be deemed guilty of Murder, if they happen to kill any of those who oppose them, or who assault them in the Execution of their Duty ; so I find, my Lords, this Case is particularly regulated in *Scotland*, by an Act of Parliament made for that Purpose, in the Reign of *James VI.* whereby it is expressly enacted, That neither the Magistrates nor People of *Edinburgh*, nor any Person assisting them in preserving the Peace, and preventing Riots or Tumults, shall be prosecuted for the wounding or killing of any Person upon such occasions ; which is an Act so much adapted to the Case of *Porteous*, that I am surprized it was not so much as mentioned at his Trial. Whether this Law was ever repealed by any future Act of Parliament, I do not know ; but if it is still in Force, I am of Opinion, it might have been pleaded even in Bar of the Indictment.

The other Objection, my Lords, is against that Part of this interlocutory Sentence, which directs, and really confines the Prisoner, as to what Evidence he was to bring for his Vindication. What may be the Method of such Trials in *Scotland*, I do not know ; but in this Country, it is certain the Prisoner is allowed to examine whatever Witnesses he pleases to call, and to prove all those Facts and Circumstances

stances he may think proper for his Justification. After all his Witnesses have given their Evidence, it belongs to the Jury to consider, whether the Facts and Circumstances proved, can any way tend to prove the Innocence of the Person accused, or to alleviate the Crime laid to his Charge; but surely the Court is not to tell the Prisoner, or the Jury, that he shall not be allowed to examine any Witness as to such a Circumstance, because it no way relates to the Matter in hand; for, sometimes, by examining a Witness as to a Fact, seemingly very remote, another Fact or Circumstance comes to light, by which the Innocence of the Person accused may be made manifest. For this Reason, I must think it a most dangerous Method of Proceeding, to lay any Restraint upon a Prisoner, with respect to the Points he is to be admitted to prove at his Trial; and it must be much more so, to confine him to those Facts and Circumstances only which happened at the Time the Crime he is accused of was committed. In the Case now before us, surely the unfortunate Prisoner ought to have been allowed to adduce what Evidence he could, with respect to all Circumstances which might any way relate to the Crime of which he was accused, whether those Circumstances happened at, or before, or after the Time the Crime was said to have been committed; in which Case he might perhaps have proved, that he had express Orders from the Magistrates to fire upon the Mob, if they made the least Attempt to assault him or his Guard, or to rescue the Criminal from the Hands of Justice; and if he had proved his having had such Orders, surely he ought not to have suffered for obeying them; for upon the Trial it was fully proved, that both he and his Guard were assaulted, and some of them wounded, by the Mob, before he or any of the Soldiers attempted, or so much as threatened to fire; and, I think, it appears upon the Trial, that a sort of Rescue was actually made; for the Duty of the Guard was not only to see the Criminal hung up, but to see him hang by the Neck till dead; that is, till the Executioner should, by Order of the proper Magistrates, cut him down, which never was done: The Criminal, as appears upon the Trial, was cut down by one of the Mob, and was cut down before any Magistrate had given an Order for cutting him down; which was really, in my Opinion, a sort of Rescue, and such a Rescue as would have justified the Guard's firing upon those that were guilty of it, if they had proper Orders for that Purpose.

From what I have said, my Lords, it appears, that the Prisoner, in this Case, was debarred the Privilege of proving what might have justified him upon his Trial; which

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was, in my Opinion, doing him a very great Piece of Injustice in the very first Step of his Trial; and in all the other Parts of the Trial, the Proceedings against him seem to have been carried on with the utmost Rigour; for, considering how widely the several Witnesses differ from one another, and how easy it is for Men to mistake Words upon such an Occasion, as well as to mistake the Firing one Piece for the Firing of another, I must think the Jury shewed him no Favour in their Verdict. However, as they likewise found it proved, that the Pannel and his Guard were attacked, and several of the Soldiers bruised and wounded, which was a sort of special Verdict, they left it to the Judges to do as they thought fit, upon considering and arguing that special Verdict; and considering that there was a Possibility of the Captain's being innocent, notwithstanding the Proof that was against him, the Judges ought, I think, to have allowed of that Attack or Assault as an Excuse, so far at least as to prevent his being deemed guilty of Murder; therefore, I hope, your Lordships will agree to this Resolution, *That the Trial and Condemnation of Captain Porteous was erroneous in several Particulars.*

Argument against  
the Motion.

My Lords, as I am convinced there was no Secret or Mystery in any Part of the Trial now under your Consideration, as it was a public, open Trial, according to the Laws and the common Methods of proceeding in such Cases in that Country; therefore, I believe, we have now all the Lights before us which any future Time can discover; and I think we have sufficient Lights for shewing us, that the Trial was regular, and the Sentence just. I shall readily agree with the noble Lord, that the Peace and Tranquillity of the Island, and the Safety of his Majesty's Subjects, were very much concerned in the Issue of that Trial; for considering how full the Proof was against the Prisoner, considering how manifestly his Guilt appeared to every Man present at the Trial, if he had been acquitted either by the Jury or by the Judges, I do not know but it might have occasioned an Insurrection in that Part of the Island; and it would have given Occasion to every hot-headed Officer, sent upon any Command, to have murdered his Majesty's Subjects, upon the least Affront offered to him by the Populace.

I have, my Lords, as great an Aversion to Mobs, and to all sorts of riotous Proceedings, as any Man can have, as any Man ought to have; and I as heartily wish we never had Occasion to employ any thing like a military Force in the Execution of the Law, or in bringing any Criminal to condign Punishment; yet I think the Liberty of Firing at random upon any Multitude of his Majesty's Subjects, is a  
**Liberty**

Liberty which ought to be most cautiously granted, and never made use of but in Cases of the most absolute Necessity ; and in this Way of thinking I am supported by the whole Tenor of the Laws of *England*. It is now three or four hundred Years since Fire-Arms first became in Use among us, yet the Law has never suffered them to be made use of by the common Officers of Justice. Pikes, Halberts, Battle-Axes, and such like, are the only Weapons that can be made use of according to Law by such Officers ; and the Reason is extremely plain, because with such Weapons they can seldom or ever hurt, much less kill, any but such as are really opposing or assaulting them ; whereas, if you put Fire-Arms into their Hands, and allow them to make the proper Use of such Arms, they may as probably hurt or kill the Innocent as the Guilty ; nay in Cities and Towns, where such Tumults generally happen, they may kill People sitting in their own Houses, or looking innocently over their Windows, which all Persons are apt to do, but especially Women and Children, when they hear any Hubbub or Noise in the Streets ; and which was really the Case in the Affair now before us ; for one Woman was killed in her Master's House, by her being unfortunately, but innocently, at the Window when the Soldiers fired.

For this Reason, my Lords, I hope it will never be laid down as a Maxim in this House, that any Party of Soldiers, or others, assisting the civil Magistrate, has a Power to fire at random upon a Multitude of his Majesty's Subjects, or in the Streets of any Town or City ; or that any Magistrate has, in any Case, an unconfined Power to give them any such Orders ; much less to give them Orders to fire upon a Multitude, which was at first lawfully and innocently assembled together. For there are two sorts of Mobs or Assemblies of the People ; one is, when a Multitude of People assembles together upon any lawful or innocent Occasion, and afterwards happens to become riotous ; and the other is, when a Multitude of People assembles together with a Design to commit some unlawful or wicked Action. With respect to the former, the most gentle Measures ought to be made use of for dispersing them, because many innocent Persons being inveigled into the Crowd, it may be some time before they can possibly get away ; but, with respect to the latter, as all that are assembled together upon such an Occasion must be some way guilty, therefore more rough and violent Measures may be made use of for dispersing them, and for preventing the Mischief they intended. But in both these Cases the Law is now certain and indisputable. Your Lordships all know that by a late Statute, which is in force

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Annoro. Geo. II. in *Scotland* as well as *England*, the Power of the civil Magistrate, in the case of any Mob or riotous Assembly, is fully and distinctly regulated; yet even by that Law, which I have often heard complained of as a Law not tolerable in a free Country, there is no express Power given to the Magistrate or his Assistants to make use of Fire-Arms; so cautious was the Legislature, even at that time, when Tumults were more frequent and more dangerous than they are at present, of giving a legal Authority for the making use of such Weapons. After reading the Proclamation, and after giving the Mob an Hour's Time to disperse themselves, and to depart to their Habitations or lawful Business, the Peace-officers may then, by that Law, seize or disperse those who shall afterwards continue unlawfully assembled; and if any Person, by resisting them, shall happen to be killed, maimed, or hurt, the Peace-officers and their Assistants are indemnified; but I doubt much if a Magistrate would be indemnified, even by this Law, should he take the short way of dispersing a Mob, by ordering his Assistants to fire among them, and should thereby kill any Person who had committed no overt Act of Resistance; especially if it should appear, that he had fired upon the Mob without any Necessity for so doing, and even without any extraordinary Provocation.

In such a case, my Lords, if the Magistrate, or any of his Assistants who did fire, were to be prosecuted by the Laws of *England*, I believe he would be brought in guilty, at least of Manslaughter; and, as what is deemed Manslaughter by the Laws of *England*, is generally deemed Murder by the Laws of *Scotland*; and as every killing is deemed Murder by the Laws of that Country, unless it happens by chance, or *se defendendo*, therefore the Judges had no Power, by the Laws of that Country, to add any such Exception as has been mentioned, to the interlocutory Sentence; nor did the Prisoner pretend to found his Innocence or his Defence upon any such Exception; for both he and his Lawyers were very well convinced, there was no Pretence for such an Argument from any of the Laws of his Country. And with respect to that of King *James VI.* which was mentioned by the reverend Prelate, I am not at all surprized it was not pleaded, or so much as mentioned by the Counsel for the Prisoner; on the contrary, I am rather surprized it was not made use of against him; for from that Law it appears, that his Firing, or giving Orders to fire, was downright Murder. That Law was made for preventing or quelling Riots and Tumults within the City of *Edinburgh*; for which Purpose the Magistrates of that City are enabled, with the King's

King's Allowance to raise Soldiers on Pay, to use Haquebuts and all other Arms when they shall think expedient; and if any Person resisting the said Magistrates in the quelling of any Riot, shall be hurt or slain, the Magistrates and their Assistants are indemnified; *providing such hurt or killing was with long Weapons, and not by shooting Haquebuts, or the like.* I need not acquaint your Lordships, that *Haquebut* was the Name then used in that Country, and formerly in this, for Fire-Arms; and that by *long Weapons* was meant Halberts, Battle-Axes, and such Weapons as are commonly used by all Assistants to Officers of Justice, in that Part of the Island as well as this. Thus your Lordships see, that killing with any sort of Fire-Arms was expressly excepted out of that Law; and therefore that Law was so far from being in favour of the Prisoner, that there might from thence have been drawn a very strong Argument against him.

I know, my Lords, it will be said, that the Officers of Justice and their Assistants, especially his Majesty's Troops, when they happen to be called to the Assistance of the civil Magistrate, are in a very unlucky Situation, if they are not to be allowed to make use of the Arms in their Hands, for preventing their being knocked on the Head with Stones and Brick-bats. This I shall readily grant, and I wish some proper Regulation were made for the Direction and Security of the Gentlemen of the Army; but we are now to consider the Law as it stands at present; and as the Law now stands in *England*, as well as *Scotland*, if an innocent Person suffers Death by firing, especially if that firing was before any Proclamation read, the Person that fired, and he who gave him Orders to fire, might both be prosecuted for Murder; I am afraid neither of them would have any Resource but in the King's Mercy. The Soldiers may, upon such Occasions, make use of their screwed Bayonets for dispersing or seizing the Rioters; by so doing they can hurt none but those that resist them; but I would not advise them to fire, unless they should find themselves in very great Danger of being overpowered, and perhaps murdered by the Mob.

As for the other Objection against this interlocutory Sentence, it is founded entirely, my Lords, upon the Method of Proceeding, and may be an Objection against the Laws of that Country, but can be no Objection against this Trial in particular. In that Country the Prisoner has a Copy of his Libel or Indictment delivered to him, and has Time allowed him to consider and consult with his Lawyers, what Defence he thinks proper to make. These Defences are afterwards considered by the Court, and if they observe any Facts that  
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Anno 10. Geo. II. can any manner of way contribute towards his Justification,

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he is allowed Process of summoning Witnesses to prove such of them as are denied by the Prosecutors; but if they be such as can no manner of way contribute towards his Justification, or such as are admitted by the Prosecutors, he is not allowed to take up the Time of the Court with impertinent or needless Examinations; and the Reason of this is, because the Examination of Witnesses is in that Country carried on in a more tedious, but a much more certain and solemn Manner, than in this. The Evidence of every Witness is taken down in writing by the Clerks at the Table, and after he has been fully examined, and cross-examined, his Evidence is read over to him, and he must sign or put his Mark to it, in order that it may remain as a Record against him, in case it should ever afterwards appear that he had wilfully perjured himself in the least Article of his Evidence. Though this Method carries along with it a great Security against Perjury, yet it has laid the criminal Courts there under a Necessity of restraining the Prisoner, and confining him to the proving of those Facts that are material, and denied by the Prosecutor; but this can never be any Disadvantage to a Prisoner, or to a Person indicted, unless the Court should exclude him from proving what was really material; and if the Court should do any such Thing, the Jury would probably consider it in their Verdict.

This Method of Proceeding, my Lords, may perhaps appear a little extraordinary to most of your Lordships, who have always been accustomed to a different Method; but this Method has certainly some Advantages, which the Method observed in this Country has not; and let this Method be good or bad, it is the Method of Proceeding established by the Laws of that Country, which cannot be altered by any Court, or by any Judge. If it could be said, that the Court of Justiciary in *Scotland* had debarred *Porteous* from proving any Facts he desired leave to prove, some Objection might then be made to the Trial; but the Truth is, as will appear upon the Face of the Trial, there was not any Fact he desired leave to prove, but what was either admitted by the Prosecutors, or he was admitted to prove; and particularly as to his having had previous Orders from the Magistrates, all he contended was, That he had Orders from the Magistrates to make his Guard charge with Shot, and even to fire among the Mob in case of Resistance; and he did not so much as desire, nor was there any Occasion for his desiring leave to prove this Fact, because it was admitted by the Prosecutors in their Pleadings, and was likewise admitted in their printed Information; nay, there was not any one Fact,

nor any Circumstance in his Behaviour, either before or after the committing of that Crime, upon which he could pretend to lay the least Strefs, with respect to his Vindication, but what was either admitted by the Prosecutors, or he was admitted to prove ; so that I am surprized to hear it so much as insinuated, that the least Injustice was done him in this Respect. On the Contrary, by the whole Tenor of the Trial, it appears he rested his Innocence intirely upon a flat Denial that he either fired, or gave Orders to fire. Anno 10. Geo. II.  
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And now, my Lords, with respect to the Jury, I must think it a little hard ; I believe it is not usual for your Lordships to pass any Censure upon the Verdict of twelve Men delivered upon Oath. Besides, these twelve Men were all either Gentlemen, or substantial Merchants or Tradesmen ; they were none of the Mob, nor were there any Talesmen among them : They have no such Thing in that Country ; when it comes to a Gentleman's Turn to attend upon a Jury, he must attend, he cannot excuse himself by giving a Shilling or half a Crown to the Sheriff's Officer. These Gentlemen were, perhaps, personally acquainted with many of the Witnesses ; some of them were perhaps themselves at the Execution ; and therefore it must be allowed, they were better Judges what Credit was to be given to the several Witnesses, than any of your Lordships can be. It was positively affirmed by several Witnesses, that they saw *Porteous* fire ; it was positively affirmed by several others, that they heard him give Orders to his Guard to fire ; other Witnesses said, they did not see him fire, and that they heard him call to his Men not to fire. Both these might have been true ; but suppose they could not, surely, the Gentlemen of the Jury were better Judges which side they ought to give Credit to, than any Lord of this House can now pretend to be ; and their having brought in a special Verdict, is to me a full Proof they were, what every Jury ought to be, altogether impartial.

But, my Lords, from this special Verdict, I find an Occasion is taken to find Fault with the Severity of the Sentence. I should be glad to know from those noble Lords, who have found Fault with this Sentence, what they think the Judges might have done ? for, in my Opinion, they could do nothing but what they have done. I have told your Lordships, we have no such Thing as Manslaughter in *Scotland* ; the Jury, by their Verdict, had found the Prisoner guilty of killing and wounding a great many of his Majesty's Subjects, but that he had been provoked by the throwing of Stones, by which some of his Men were wounded. What could the Judges do in this Case ? They must either determine, that the killing was Murder, or they must have said it was *se defendendo*.

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*sendendo*, or by Chance: No Law in the World could have justified them in determining, that the Prisoner had killed these People by Chance, or *se defendendo*; therefore they were obliged to determine it was Murder, and to pass Sentence accordingly. They might perhaps have recommended him to the Crown as a proper Object of Mercy; but I do not find they did, and I must beg Leave to say, I do not think they had any Reason to do so; for, though I would go as far as any Man, in justifying an Officer for executing his Orders, and performing his Duty with Courage and Resolution: yet, in our own Dominions, and among our own Subjects, except in Cases of an open Rebellion, I think a great Tenderness ought to be shewn towards the People: I am sure a Man of real Courage always will; and though the unfortunate Man, whose Trial is under our Consideration is now dead, yet I cannot help saying, that upon the Occasion for which he was afterwards condemned to die, he behaved more like a Mad-man than like a prudent and brave Officer.

I shall not pretend, my Lords, to justify every Part of the Law of *Scotland*, or every Method they have of Proceeding in their Courts of Justice. There is not, there never was, I believe, a Body of Laws in the World, against which a great many Objections may not be made. In every Country, the Inhabitants are apt to extol the Justice and Perfection of their own Laws; and those who are of a different Country, are sometimes apt to mistake the greatest Beauties for great Imperfections. I do not pretend to understand the Law of this Country, it is none of my Business; but I think I could point out several Imperfections; I shall only mention one, which I really take to be not only an Imperfection, but an Absurdity. By the Law of this Kingdom, if a rich Man is convicted of Felony, the Sheriff is to be a great Gainer by his Conviction; he may perhaps acquire an opulent Fortune by such Conviction, and yet that very Sheriff is the Man who is to name the Jury who are to try him, and may name such Persons as he thinks fit. According to this Method, a rich Man must take great Care never to be indicted for Felony, or at least never to let it come to a Trial, however false and malicious the Prosecution may appear to be; for if he should allow it to come to a Trial, I think he stands more than an equal Chance of having a Verdict against him; because as soon as that Verdict is returned, the Sheriff becomes his Heir, or at least his Executor, and may immediately take Possession of his personal Estate. I could mention many other Imperfections, and perhaps Errors, in the Law of *England*; and I do not doubt but there are as many in the Law of *Scotland*; but neither the one nor the other ought to be altered

altered in any material Point, without very mature Consideration ; otherwise we may happen to create two new Imperfections for every one of the Old we attempt to remove. The Laws of *Scotland*, upon which the unfortunate Man, whose Case is now under our Consideration, was condemned, may be wrong ; the Methods of Proceeding, by which he was tried, may be severe : But such as they are, they were then, and are still, the Laws of that Country, according to which the Judges were bound by their Oath to proceed and determine ; therefore, if your Lordships come to any Resolution relating to that Trial, your Resolution ought, in my Opinion, to be, That it was regular and just ; and such a Resolution will, I am sure, contribute more to the Peace and Tranquillity of the Kingdom, and to the Safety of his Majesty's Subjects, than any Censure you can put upon it.

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As this Motion was not much insisted on, there was not any thing said by way of Reply, nor any Division upon it.

The chief Speakers for the Motion, were, Lord *Carteret*, Speakers. Lord *Bathurst*, the Earl of *Winchelsea*, and the Lord *Lovel*. The Lord Chancellor and the Bishop of *Salisbury* spoke against the Trial, but thought they had not sufficient Lights to pass any Censure upon it ; and the chief Speakers against the Motion, and in favour of the Trial, were the Lord *Hervey*, the Earl of *Finlater*, the Earl of *Islla*, the Duke of *Argyle*, and the Earl of *Scarborough*.

Upon occasion of this Debate, the Duke of *Argyle* proposed that the Judges should deliver their Opinions upon the following Questions relating to the above Act, viz.

1. If an Execution should be performed in *Stocks-Market*, where a Guard of the regular Troops should be drawn up by lawful Command to prevent a Rescue of the Criminal, and should several Stones, thrown from among the Crowd, light among them, by some of which several Soldiers should be bruised and wounded ; would such a Guard be guilty of a Crime, if by firing among the Crowd, they should kill several Persons ? And if guilty of a Crime, what Crime would it be ?

Queries to be  
proposed to the  
Judges for their  
Opinion.

2. Upon occasion of a Riot in or near a Town, where a Regiment is quartered, should the Sheriff of the County order the commanding Officer to assemble the Regiment, and march to his Assistance against the Rioters, is such Officer obliged to obey, or may he obey ? And what Penalty is there, if he should refuse ?

3. If a Detachment of the Army is ordered to prevent a Number of People from pulling down of Houses, or committing any other illegal Action, and that the commanding Officer of such Detachment has Orders to repel Force by Force,

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can such Detachment lawfully make use of Force by firing, unless they are attacked by the Rioters ?

4. In case Rioters should be pulling down Houses, or doing any other Mischief in one Part of the Town, and a Detachment of the Army should be ordered, in aid of the civil Magistrate, to march thither to disperse them, and a Number of People should assemble, and stop up such of the Passages through which such Detachment must necessarily pass, whether such Detachment may use Force to disperse the People so assembled, in order to pass that Way, without being first attacked by them ?

*Ordered accordingly.*

Supposing such an Execution in *Edinburgh Grass-Market*, the *Scotch* Judges to answer the same Questions by the *Scotch* Laws, and sign their Opinions.

*Ordered accordingly.*

A Debate, Whether the *Scotch* Judges should be examined at the Bar, at the Table, or upon the Wool-sacks.

The three Judges before-mentioned, being arrived from *Scotland*, according to Order, there arose a Question in the House of Peers, whether they ought to be examined at the Bar, at the Table, or upon the Wool-sacks ; which Question was debated for some Time on *Friday, April 29* ; but the Earl of *Ilà* having proposed, that the House should resolve itself into a Committee, to search Precedents in relation to that Question, the same was agreed to, and it was resolved, That the House would, on the *Monday* following resolve itself into the said Committee ; and accordingly, on that Day, the House being resolved into the said Committee, the Question was again fully debated, and the Arguments for examining them at the Table, or upon the Wool-sacks, were to the following Effect, *viz.*

Arguments for their being examined at the Table, or on the Wool-sacks.

My Lords, as I was not one of those Lords who desired the Attendance of any Judge or Judges from *Scotland*, I cannot certainly tell what was the true Meaning of their being ordered to attend ; but as no Enquiry has been made into any Part of their Conduct, as no Resolution of the Committee seemed to be directed against any of them, I cannot think they were called up, or meant to be called up, as Persons guilty of any Crime or Misdemeanor ; and as they had nothing to do with any thing that happened when *Porteous* committed that Crime for which he was condemned to die, nor with any thing that happened at the time that unfortunate Man was murdered, I cannot think they were called up as Witnesses in any Part of that Affair ; therefore I must suppose the only Reason for desiring their Attendance proceeded from the authentic Copy of *Porteous's* Trial now upon your Table. I suppose, from that Trial, some Doubts and Difficulties had occurred to your Lordships with regard to the Laws of *Scotland*,

land, and the judicial Proceedings of the supreme Court of  
 Jusiciary in that Country ; and that therefore you desired the  
 Attendance of those three Judges, in order to resolve those  
 Doubts, and remove those Difficulties.

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If this be the Case, my Lords, I must think you can ask those Judges no Questions, nor can they answer any Questions, till they are brought into the House in a regular Manner, and placed according to their Rank upon the Wool-sacks. I am indeed surprized, that no Regulation for this Purpose was made by the Articles of the Union, and I am as much surprized to find we have continued for so many Years without making such a Regulation ; for as the Laws of *Scotland* are very different from those of *England*, there is as great a Necessity for this House's being always provided with the Attendance of some, at least, of the *Scotch* Judges, as there is for our having some of the *English* Judges always among us. In this House, Laws are to be passed relating to *Scotland* as well as *England* ; in this House, Appeals in all Causes from *Scotland* as well as *England*, are to be ultimately and finally determin'd ; in this House, a Peer of *Scotland* may come to be tried for a Crime committed in *Scotland*, and for which he is to be tried according to the Laws of *Scotland* ; nay, in this House we may have occasion to pass Laws for regulating the Courts of Justice in *Scotland* ; and how we can justly and conscientiously answer either of these Purposes, without having some of the *Scotch* Judges among us, is what I can no way comprehend. It is true, we have at present, we have had ever since the Union, some of the sixteen Representatives of the Peerage of *Scotland*, who are, or have been, great Masters of the Laws of their own Country, as well as of the Laws of many other Countries ; but this is a good Fortune we are far from being sure of. We may have sixteen Peers sent up from *Scotland*, not one of whom may know more of the Laws of *Scotland*, than most of us can pretend to know of the Laws of *England* ; and in that Case, I should be glad to know, how it would be possible for us to proceed upon, or determine any Affair which required a thorough Knowledge, or at least a full Information, as to the Laws of that Country ?

From this Consideration, my Lords, I really think it inconsistent with the Dignity of this House, and with the Honour and Character of our Proceedings, not to have the Attendance of some of the *Scotch* Judges, in order to give us proper Lights, and such as may be depended on, into the Laws and Customs of that Country ; for surely, no man can form a good Opinion of the Proceedings of any Assembly, where the Members determine without either Knowledge or Information ; and for this Reason, I am surprized this Affair

was



Anno 10. Geo. II. was not particularly thought of, and expressly regulated, at the Time the Union was concluded. If it had been thought of at that Time, I believe there is no Doubt to be made, but that the Judges from *Scotland*, appointed or ordered to attend this House, would have had Places assigned them on the Woolfacks, next to the Judges of the same Rank in *England*; and tho' this Affair was at that time neglected to be expressly and particularly regulated, yet it is an Affair, which I think, the People of *Scotland* may insist on from the general Terms of the Union; and it is an Affair, which, in my Opinion, your Lordships cannot well refuse. By the Articles of Union it is expressly stipulated, that there shall be but one Parliament for this united Kingdom, and that the Subjects shall have a Communication of all Advantages, except where otherwise agreed in the Articles of Union. Is it not a great Advantage to the People of *England*, to have their learned Judges always present in this House, in order to give us that Information, which is necessary in all Cases where a Doubt arises about the established Laws and Customs of *England*? If this be an Advantage, as it certainly is, the People of *Scotland* have a good Title to claim the same Advantage, and to insist upon having some of their Judges likewise present in Parliament for the same necessary Purpose. This is an Advantage, I say, they have a good Title, from these general Words, to claim; because it is no way excepted by any Article of the Union; and, as every Honour is an Advantage, they have a Right to claim, that the same Honours, the same Respect, may be shewn by this House to the Judges of *Scotland*, as are shewn to the Judges of *England*, except that only of allowing a Preference to the latter, with respect to their respective Ranks or Degrees.

As this House, has ever since the Union, had the good Fortune to be supplied, from time to time, with noble Lords, eminent for their Knowledge and Experience in the Laws of their Country, who happened to be of the sixteen chosen to represent the Peerage of *Scotland*, it has prevented our taking Notice of this Defect in the Union; and it has prevented the People of *Scotland*'s laying claim to that Advantage, which they certainly, in my Opinion, have a Title to claim; it has even prevented their being sensible of any Want in this Respect: This, my Lords, contributes greatly to the Honour of some Lords we have had among us from that Country, and likewise to the Honour of some we have still the Happiness to have among us; for I must do so much Justice to some of the noble Lords of that Country we have now among us, as to say, that I believe we stand now as little in need of Information from the learned Judges of *Scotland*, as ever we did in any former

former Parliament ; but this Advantage must of course cease in a Generation or two ; for, as no new Title of Honour can be granted in *Scotland*, we can expect few or no Lawyers from that Country in the very next Age. I believe your Lordships are all sensible, we should be often at a great Loss, even with respect to the Laws of *England*, if we had no learned Judges to have Recourse to, nor any Peers who had been raised to the Honour of Peerage, on account of their profound Skill and Experience in the Laws of their Country ; and from thence your Lordships must see how necessary it will probably be for this House, in future times, to have always some of the learned Judges in *Scotland* attending. This is the first time any of them have ever been called to attend, it is the first time it has ever been thought necessary to ask them any Questions ; and if your Lordships oblige them now to attend, if you think proper to ask them any Questions, I hope you will shew them the same Honours, the same Respect, you would do to the Judges of any of the Courts of *Westminster-hall*, if they should be ordered to attend for the like Purpose.

To put this Matter in a clear Light, give me Leave, my Lords, to suppose a Writ of Error brought into this House from any of the Courts in *Westminster-hall*, from the Court of *King's-Bench*, for Example ; suppose upon reading the Case, various Doubts and Scruples should occur to some of your Lordships, with regard to the Laws relating to that particular Case, and with regard to the Proceedings below, for the clearing up of which, you should desire to ask the Judges some Questions, and for that Purpose should order them to attend at the Hearing ; surely, you would not call them to the Bar, you would desire them to attend only in their Places upon the Wool-sacks. Again, suppose this very Affair of *Porteous* had happened at *Newcastle* instead of *Edinburgh* ; suppose he had been tried and condemned by the Judges upon the Affizes there ; and, suppose, you should order the Judges, by whom he was condemned, to attend, in order to answer some Questions, and to explain some Doubts, relating to his Trial and Condemnation, would your Lordships order them to attend at the Bar ? No, my Lords, you could not ; you, at least, would not desire their Attendance any where, but in their usual Places upon the Wool-sacks. Therefore, from a Parity of Reason, if your Lordships desire the Judges of the supreme Court of *Jusiciary* in *Scotland*, which is the same with the Court of *King's Bench* in *England* ; I say, if you desire those Judges to attend, if you desire to ask them any Questions about the Laws and Customs of *Scotland*, you ought first, in my Opinion, to take the proper Method for giving them the Places due to them upon the Wool-sacks.

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Anno 10. Geo. II.  
1737.

Anno 10. Geo. II. <sup>1737.</sup> in order that they may from thence answer such Questions, as you have a mind to put to them ; for, if they should answer Questions from any other Place, I am afraid, the greatest Part of their Countrymen will be apt to say, they have done what I shall not chuse to express.

But now, my Lords, suppose the Judges you have called up, are not to have any Questions put to them as Judges, but that they are to be examined as Witnesses, in order to see if they can give you any light into the Affair now depending before you ; yet, as Judges of one of the Supreme Courts of *Scotland*, and, consequently, as having a Right to be within the House, they ought to be examined at your Table, which is the Place, I believe, where the Judges of *England* would be examined, if they were to give Evidence in any Affair before you ; for it appears upon your Journals, that in the Year 1689, two Gentlemen had the Honour of being examined at your Table, tho' they were not then Judges, but only because they had been Judges, and, as such, had had Places within the House. For this Reason, the Gentlemen who are attending by your Order, if they are to be examined as Witnesses, ought, I think, to be examined at the Table ; it is what, in my Opinion, they have a Right to insist on by the Articles of the Union between the two Nations, which I hope your Lordships will never break through, in the most trifling Circumstance, without the unanimous Consent of both.

I hope, my Lords, no Encroachment will ever be made in this House upon the Right of any private Man ; I hope the meanest Subject will always be able to sue with Success in this House, for any Right or Privilege he can shew a just Claim to ; but the Right now in dispute before your Lordships, is not the Right of a private Man, nor is it a Right of a private Nature ; it is the Right of a whole People, it is the Right of a Nation once free and independent, and, it is a Right stipulated by one of the most public and most solemn Contracts that was ever made ; a Contract which on our Parts, we are obliged to observe and fulfil with the greatest Nicety, because the People of *Scotland* trusted entirely to our Honour for a faithful Performance ; a submitting to be governed by one and the same Parliament, in which they knew we would always have a great Majority, was really in Effect submitting every thing to our Honour ; and I hope, they shall never have the least occasion to repent of the Confidence they have reposed in us. For this reason, in all Cases, where the Rights or the Privileges of the People of *Scotland*, by virtue of the Articles of Union, come to be questioned, I shall always have a strong Bias in

In their Favour, especially when the Matter in Question relates to a Piece of mere Ceremony. But in the present Case, I must think, there can be properly no Question; for, whether the Judges of *Scotland* ought to be in this House as Assistants, to give their Opinions upon such Matters of Law, as may arise in the Course of our Proceedings, in the same Manner as the Judges of *England* do, is a Question, I think, determined not only by the Articles of Union, but by the very Nature of the Thing itself; because, while *Scotland* continues to be governed by Laws different from *England*, it will be impossible for us to do our Duty without such Assistance.

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My Lords, as nothing contributed more than the Union between the two Kingdoms, towards securing the Protestant Succession in the present illustrious Family, so there is nothing can contribute more to the Preservation of that Succession, than the rendering that Union every Day more firm and unalterable; which can no way be done more effectually, than by cementing the People by an Union in Hearts and Affections, as well as an Union established by Law. While we have such a Majority in both Houses of Parliament, the People of *Scotland* will always find it impossible to break through or dissolve the legal Union that subsists between us; but, if we should ever make use of that Majority, which I hope we never shall, to break through or encroach upon those Articles which have been stipulated between us, the legal Union will be of little Force, it will only serve to make them desperate, and to run the Risk even of their own Perdition, in order to rid themselves of the Yoke they groan under. They will be apt to ascribe to the present Royal Family all the Ills they feel, or imagine they feel; and if they should unanimously join in a contrary Interest, we know they would be supported by a numerous Party in this Part of the Island, as well as by a powerful Party beyond Seas; for which reason we ought to take all possible Care, not to give them any just Ground of Complaint; we ought even to avoid a Measure which may be made use of by the Enemies of the Government, for sowing Discontent and Disaffection in that Part of the Island. The Minds of the People in that Country, are at present in great Agitation; the bringing up of so many Gentlemen, on account of a Murder committed by the very Dregs of the People, must give them a good deal of Concern; and, we may suppose that every Man's Attention is fixed upon the Behaviour of this House towards their Judges: If we treat them with any seeming Disrespect, if we treat them in any Manner different from that, in which the Judges of

ANNO 10. GEO. II. 1737. *England* would be treated upon a like Occasion, I am afraid the People in general will look on it as an Indignity offered to the whole Nation, and as a Violation of the Articles of Union; therefore I hope your Lordships will not examine them at all, or examine them in a Manner to which no Exception can be taken.

As I am not of that Country, I have spoke with the more Freedom in this Debate, because I think I cannot be suspected of Prejudice or Partiality. If I have any, I confess it is upon that Side, on which I think my own Honour and the Honour of my Country most deeply concerned, which I take to be in a most exact Observance, not only of the Words, but of the Spirit and Intention of the Articles of Union. We contracted together as Nations quite independent of one another, and by the whole Tenor of the Contract it appears, that the Subjects of both Kingdoms are entitled to equal Honours, Privileges, and Advantages. We have no pretence to any Pre-eminence, but only that those of any Rank in *England* shall have the Precedence of those of the same Rank in *Scotland*. This they have always since the Union allowed us, and I hope we shall never dispute conferring upon any Gentleman of Rank in *Scotland*, those Marks of Honour or Respect, which are bestowed upon Gentlemen of the same Rank in *England*. I shall not pretend to prescribe to your Lordships what Method you are to take for conferring those Marks of Honour or Respect; as the Judges of *England* sit here by virtue of the King's Writ, I should think the most regular Way would be, to address his Majesty to order such Writs to be issued, as may be thought proper, for enabling the three *Scotch* Judges now attending by your Lordships Order, to come and take their Places upon the Wool-sacks; but I shall make no Motion for this Purpose, till I hear the Sentiments of other Lords upon the same Subject.

The Answer was in Substance as follows:

Answer.

My Lords, I am sure I am as ignorant as the noble Lord who spoke last, how the three *Scotch* Judges came to be sent for, or what were the Reasons for sending for them. Whether their Attendance was desired, in order that they might be examined as Witnesses in the Affair now depending before us, or in order that they might answer Questions, and give their Opinions as Judges learned in the Laws of *Scotland*, is what I know nothing of; for I was no ways privy to the Design of making such a Motion, nor did I know any thing of it till I heard it made; and I gave my consent to it, only because I supposed the noble Duke who made it, had good Reasons for sending for them, which would

would appear at the proper Time from the Questions he Anno 10. Geo. II.  
 should ask, and the Cases he should put to them. I very 1737  
 well remember, that a few Days before the Motion was  
 made for ordering these three Judges to attend, a Motion  
 was made by a noble Lord near me, for ordering one of  
 these Judges, I mean the Lord Justice Clerk, to attend,  
 which Motion was upon a Division agreed to; but, if I  
 did not mistake the noble Lord who made that Motion, he  
 did not mean to send for that Gentleman as a Judge, but as  
 an Officer of State, and as one very much entrusted, by  
 virtue of his Office with the Civil Government of that  
 Country; he did not mean to send for a Gentleman to an-  
 swer any Questions about the Laws of Scotland, but to an-  
 swer for his own Country about the time *Parliament* was mur-  
 dered; and as I thought the Conduct of that Gentleman  
 was not such as it ought to have been upon that occasion,  
 I joined with the noble Lord in his Motion; but I then  
 had, as I generally have, the Misfortune to be of the wrong  
 Side of the Question.

Notwithstanding the ill Fate of this Motion at first, yet,  
 my Lords, it might probably have been renewed in the  
 Course of our Enquiry; but in a few Days after, a noble  
 Duke stood up and moved that this very Lord Justice Clerk,  
 together with the two Senior Judges of the same Court, might  
 be ordered to attend; which was accordingly agreed to;  
 and this made the Renewal of the first Motion unnecessary.  
 This different Method of sending for him, appeared to me  
 at first as a Matter of no great Moment; but now I must  
 say, I wish the first Motion had been agreed to, because  
 in that Case, I believe we should have had no such second  
 Motion; I believe none other of the *Scottish* Judges would  
 have been sent for; and if none other of them had been  
 sent for, we should at that Time at least have had no such  
 Question as the present before us; for tho' I am in my own  
 Opinion very clear in the Question now before us, yet I wish  
 with all my Heart no such Question had upon this occasion  
 occurred.

Whether the Judges of Scotland, my Lords, have a Right  
 by the Articles of Union, to insist upon having the King's  
 Visit for being attended in this House, and for having Places  
 along the outside of the Woolstacks; or whether  
 it be necessary for them to have their Attendance, are Questions,  
 which, I think, are now before us; and there-  
 fore I shall not detain your Lordships Time with enquir-  
 ing into them; but I think no Judge of Scotland was ever  
 admitted to be present, nor have any of them now a  
 Right to come within this House; for no Man can come

Annoro. Geo. II. within our Bar but by Patent, by Writ, or by Custom. The

1737.

Judges of *England* have their Places upon the Wool-sacks by the King's Writ, and till the Judges of *Scotland* get Writs of the same Nature, they have no Right to come within our Bar, nor have we, I think, a Power to bring them within the Bar, because it would, in my Opinion, be an Encroachment upon the King's Prerogative. Nay, I must go farther, I do not think the King himself, even with the Consent of this House, can issue out any such Writ; for even the King's Power of issuing such Writs is limited by Custom. His Majesty may by Custom, and by his Prerogative, create as many Dukes, Marquisses, Earls, Viscounts, or Barons as he pleases; but I do not think he can grant, or rather create, a new Title of Honour in *Great Britain* without an Act of Parliament. So he may by Writ call the Judges of *England* to be Assistants to this House: He might likewise, according to the ancient Custom, issue Writs for his Serjeants at Law, his Counsel learned in the Law, and some other Officers, to attend as Assistants; but I do not think that he can issue Writs for the Attendance of any Judges, Serjeants, Counsellors, or Officers, not warranted by ancient Custom: For the issuing of any Writ, not warranted by Custom, there must be an Act of Parliament; because it is a Matter which concerns the whole Nation, it concerns the other House as well as this; and any such Attempt would certainly meet with Opposition from the other House. Therefore, as the issuing of any Writ for summoning the Judges of *Scotland* to attend in Parliament, was not particularly and expressly established by the Articles of Union, it cannot now be done but by an Act agreed to by all the Branches of our Legislature; and as it cannot be done without such an Act, it would be very improper for us to present to his Majesty any such Address as has been proposed.

If the Judges of *Scotland* had ever had any such Writs as the Judges of *England* have, for summoning them to Parliament, if they had ever had the Honour of having a Seat within the Bar, they would then have had a Right to claim giving their Opinions upon the Wool-sacks, or to be examined at the Table; but, my Lords, as they have never yet had any such Honour, they have certainly no Right to claim any such Privilege; for it is upon the Honour of having a Seat in the House, and upon that only, the Privilege of being examined at the Table depends. To the highest Officer in the Kingdom, if he has no Seat in the House, we cannot grant that Privilege, without sacrificing the Honour and Dignity of the House, and, in my Opinion, encroaching upon

upon the Prerogative of the Crown ; and if we should once Annoro. Geo. II.  
 begin to make any such Sacrifices, or any such Encroachment, God only knows how far we may be induced or  
 obliged to go. If we once break through the ancient Rule, 1737.  
 if we once begin to grant the Privilege of being examined  
 at the Table, to any one Officer who has not the Honour of  
 having a Seat in the House, many other Officers will claim  
 the same Privilege ; and I make no doubt, but the other  
 House would immediately set up such a Claim, with respect  
 to every one of its own Members. The Judges of *Scotland*  
 now attending, we may compel to appear before us in such  
 Manner as we think proper ; but let us consider, my Lords,  
 we cannot compel the Members of the other House to come  
 to be examined at all before us ; and therefore, if we give  
 that House a Pretence for setting up and insisting upon any  
 new Privilege, we must comply with it, or we shall be de-  
 prived of every Evidence any Member of that House may  
 hereafter be able to give, with respect to any Affair depend-  
 ing before us ; for, as no Member of the other House is obliged  
 to come to be examined before us, as he cannot come without  
 the Leave of the House to which he belongs, we may de-  
 pend on it, that House will never grant Leave to any of their  
 Members to be examined at our Bar, after we have once  
 furnished them with a Pretence for being examined at the  
 Table.

As that, my Lords, of having a Seat in the House, is the  
 only Title, upon which any Person can claim being examined  
 at the Table, so this is a Rule which we have hitherto most  
 strictly and most uniformly observed ; in so much, that the  
 highest Officers in the Kingdom have been examined at our  
 Bar, without any Regard to the Office they bore, and with-  
 out shewing them the least Respect on that Account. It  
 appears upon our Journals, that the Commissioners of the  
 Great Seal were examined at our Bar, and without any more  
 Ceremony or Respect, than would have been shewn to the  
 most private Gentleman in the Kingdom. It likewise ap-  
 pears upon our Journals, that an honourable Gentleman  
 was examined at our Bar, who was, at that very Time, first  
 Commissioner to the Treasury, Chancellor of the *Exchequer*,  
 and not only a Privy Counsellor, but, I believe, a Cabinet  
 Counsellor to the King then upon the Throne ; and though  
 that Gentleman still possesses the same Employments, though  
 he enjoys as many Honours, and is as much respected by  
 this House, as any Gentleman ever was in *England*, yet, if  
 he were again to be examined as a Witness in any Affair  
 before us, I hope he would, I think he ought to be examin-  
 ed in the same Manner.

This



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This shews that no Post a Man possesses, no Honour he can have, except that of having had a Seat in this House, can entitle him to the Privilege of being examined at the Table; and the Example of the two Gentlemen mentioned, who were admitted to read some Records at our Table, instead of reading them at the Bar, in the Convention of Estates in 1688, is no Exception to this Rule; for those two Gentlemen, my Lords, had both been Judges, they had both had Seats in the House, and the Convention were certainly of Opinion, they had been illegally turned out, therefore they still looked on them as having a Right to a Seat in the House; and having called, or rather desired the Favour of them to come and assist the House in reading some old Records, they could do no less than allow them that Privilege, which they were in Equity, tho' not in Law, entitled to. But suppose these two Gentlemen had had no Pretence to have been admitted within the House, that Convention was no Parliament, nor was that Assembly of Lords properly a House of Lords: They were not considered as such by the Nation, because their Acts or Orders were confirmed by an express Law passed in the next ensuing Parliament, for which there would have been no Occasion, if the Parliament or Nation had looked upon that Convention as a legal and regular Parliament; therefore nothing that was done in that Convention can be a Precedent for us, and much less can it be a Foundation for our breaking through a Rule that has been established, and constantly observed ever since we have had any Records of Parliament.

I have as great a Regard, my Lords, as any Man can have for the Articles of Union; I have as great a Regard for the People of *Scotland*, and would be as loth as any Man to give them a just Cause of Complaint; but, I have an equal Regard for the Honour and Dignity of this House; and, I am sure, my shewing a due Regard to the House of Peers, of which I have the Honour to be a Member, can never give Offence to any Man of common Understanding in *Scotland*; therefore I am certain, our shewing a strict Regard to our Privileges on this Occasion, can never disoblige any great Number of Persons in that Country, where good Sense abounds as much among the People, as it does, I believe, in any Country in the World. Nay, I am convinced, a Sacrifice of the Honour and Dignity of this House, on any Account whatsoever, would generally disoblige the People of that Country as well as the People of this; for, we are now entrusted with the Honour and Privileges of the Peerage of both Nations; and, to prostitute the Dignity of this House in any Respect, or for any Consideration, would be a Prostitution

tution of the Honour and Privileges of the Peerage of *Scotland*, Anno 10. Geo. II. as well as *England*.

What Benefit or Advantage might accrue to the People of *Scotland*, from having their Judges present in this House, what Right the People may have from the Intention and Spirit of the Articles of Union, to claim that Benefit, and what Necessity or Occasion this House may hereafter have for the Attendance of some of those Judges, are Questions which I am sure we have not Time to enquire into in this Session; and much less can we enquire into, or regulate this Affair, before it will be necessary for us to examine the *Scotch* Judges, who are now attending by our Order. I should with all my Heart agree to our enquiring into that Affair, if I thought it possible for us to go through with it before the End of the Session; I should readily join in granting the People of *Scotland* all the Right they could claim, nay, all the Favour they could expect upon the Issue of such an Enquiry; but I believe it will be granted, that every one of these Questions is a little doubtful, and of great Moment; therefore it will be necessary to enquire into them with great Calmness and Exactness, and not to resolve either of them till after the most mature Deliberation. It would be necessary to enquire into the ancient Customs and Usages of the Parliaments of *Scotland*, in order to see whether the Judges of *Scotland* had any Seats, as such, in their Parliaments; several other Matters would be necessary to be enquired into; and we shall certainly meet with a good deal of Difficulty in allotting them their proper Places upon the Wool-sacks, in determining what Number of them should always attend, and in regulating how they should take their Turns in attending; for I hope you would not have them all to attend, so as to make every Session of Parliament an absolute Cessation of all manner of Justice in *Scotland*. Many other difficult Questions would certainly occur in the Course of that Affair; and it would be necessary to manage every one of them with great Tenderness, in order to prevent any possible Breach between the two Houses of Parliament, as well as to prevent raising any fresh Animosity between the two Nations. From all which I must conclude it impossible for us to pass any Bill in this Session, for bringing any Judges from *Scotland* into this House; and as there is no Method of doing it, but by an Act of Parliament, therefore it cannot be proper for us to enter upon any such Affair at present.

Thus your Lordships must, I think, all see, that it is impossible for us to grant those Honours, or to shew that Respect to the three *Scotch* Judges now attending, which some Lords seem to desire, and which I should willingly agree to, if

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if we could possibly do it without sacrificing the Honour and Dignity of this House, and exposing both ourselves and our Posterity to numberless Inconveniences. I am sorry any Question of this Nature should have happened: I am now more sorry, my Lords, than I was at first, that the Motion for bringing up the Lord Justice Clerk was not agreed to; because I believe it would have prevented any such Question as the present; but now the Question has occurred, I hope your Lordships will shew a due Regard to the Honour and Dignity of your own House, by resolving to examine these Judges at the Bar, in the same Manner as you have examined the greatest Officers in *England*, who happened not to have the Honour of having a Seat among us. As such a Resolution can offend no Man of common Sense, it can raise no general Discontent in *Scotland*, nor occasion any Disaffection to the illustrious Family we have now the Happiness to have upon the Throne. If any unthinking People in *Scotland* should be misled by the Enemies to our happy Establishment, it will be easy for the noble Lords of that Country we have now among us to undeceive them, and to convince them, that no Indignity or Affront was intended by any such Resolution. The Abilities of all these noble Lords are apparent, I am sure their Inclination will not be wanting, and I do not question but their Interest and Authority among the People of their Country are equal to their Abilities.

Therefore, my Lords, as no Danger is to be apprehended from our examining the Judges now attending, in the usual Manner in which all Persons, who have not a Seat in this House, are examined; and as great Danger is to be apprehended, and many Inconveniences must necessarily ensue from examining them in any different Manner, I shall conclude with this Motion, That the Lord Justice Clerk, and the two senior Judges of the Court of Justiciary in *Scotland*, now attending according to Order, be examined at the Bar of this House.

The Reply was in Substance as follows.

Reply.

My Lords, I am sorry, not on account of the present Question's having now happened, nor on account of its having happened on this Occasion, but on account of its being made a Question at all. I am sorry the Right the *Scotch* Nation has to have their Judges in this House, should ever have been brought into Dispute; for I am sure such a Contest can no way contribute to the Welfare of the united Kingdom, or to the Establishment of that Harmony which ought to be kept up between the People of those two Kingdoms, which were long separate and independent, but are now, for the Benefit of both, happily united into one. Un-

reasonable

reasonable Feuds and Animosities are but too apt to arise between any two People, who have been long accustomed to live under distinct Governments, and are but just united under one and the same. The Flames of Dissension may cease or disappear, but it is a long Time before the Fire can be entirely extinguished; and therefore, those who have the Honour of being entrusted with the Government of any such two People, ought to be extremely cautious of engaging in any Measure, or of bringing any Question upon the Carpet, which may blow up those Coals that have been but lately covered with the Ashes of Wisdom and good Policy, and cannot therefore be supposed to be absolutely extinguished. If the bringing up of all, or any of the Judges of *Scotland*, as Assistants to this House, could possibly be of any Prejudice to the People of *England*; or if it could be looked on as any way dishonourable to, or beneath the Dignity of this House, I should not at all have been surprized to have heard it contested, but when it can be no way prejudicial to the People of *England*, nor any way dishonourable to this House; when it may so greatly contribute to the Advantage of the People of *Scotland*; and when it appears in itself so necessary, for enabling us to determine many Questions that may come before us; I confess I am not only surprized, but I am sorry to find it so much as contested.

I remember, my Lords, the first Motion in this House, relating to any of the *Scotch* Judges, was for bringing up the Lord Justice Clerk only. I was against that Motion, for the very Reason, it seems, which made other Lords for it. I was against it, because it seemed to be a Motion for bringing him up as a Criminal, and not as a Judge; and I was against his being brought up as a Criminal, because there was nothing then appeared before us, which could give the least Foundation for such an Accusation. I agreed with the Motion for bringing him and the two senior Judges of the same Court up, because I knew your Lordships had a Power of requiring the Attendance of any of the Judges of *Scotland*, as well as you may require the Attendance of any of the Judges of *England*; and I have always observed, that no such Order has ever been refused, when any Lord of this House pleased to ask for it. These, my Lords, were my Reasons, and I still think they were good Reasons, for agreeing to the second Motion, and for disagreeing to the first. But suppose the first had been agreed to by the House, it could not have prevented the second, because any Lord of this House had a Power to desire, that any of the Judges of *Scotland* might be ordered to attend, in order to explain some Doubts that had occurred to him relating to the Law of

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*Scotland*; and surely, no Lord, who wanted to have such Doubts explained, would have trusted the Explanation of them to a Judge, who had been brought up as a Criminal. Again, suppose the Lord Justice Clerk had been brought up by himself alone, suppose he had been brought up, not as a Judge but as a Criminal, the same Question would have occurred; because, as he is a *Scotch* Judge, and one of the chief of them too, he must have been considered as such, till some Resolution, at least of this House, had passed against him: Therefore in his first Examination he might have insisted, he ought to have insisted, on his being examined at your Table; for I am sure your Lordships would not have made a new Precedent for condemning a Man without hearing him. Our having agreed to the first Motion relating to any of the *Scotch* Judges, could not therefore have prevented the present Question; there was no way of preventing it, but by a previous, and what I must call a prudent Care, to give the Judges of *Scotland* what I think of Right belongs to them, I mean their Places upon the Wool-sacks, before you resolved to desire their Attendance, either as Judges, as Witnesses, or as Criminals. Their Conduct as Judges has been already approved, or at least not condemned by your Lordships; and if any of your Lordships are of Opinion the Lord Justice Clerk has misbehaved in any other Part of his Duty, you have him now attending; you may revive the Committee, and may proceed to enquire into his Conduct; but, before you begin to proceed against him as an Officer of State, I hope you will grant him what I think of Right belongs to him as a Judge of *Scotland*.

The Right, my Lords, which the Judges of *Scotland* have, by the Articles of Union, to insist upon having the King's Writ for being present in this House, and for having Places among the other Judges upon the Wool-sacks, or rather the Right which the People of *Scotland* may claim, of having some of their Judges always attending as Assistants to this House, is the first and chief Question now before us; because, without first determining this, you cannot determine the other, as to the Place in which they are to be examined; nay, the Determination of the second, determine it which way you will, must be a full and a final Determination of the first. If the Judges or People of *Scotland* have any such Right by the Articles of Union, they have had it ever since those Articles were agreed to; and if they have had such a Right ever since that Time, the Judges now attending have had an undoubted Right to Seats in this House for many Years, though they never hitherto had Occasion to take Possession of them. It has never been established

blished as a Rule, not to admit any Person to be examined within the Bar, but such as were actually in Possession of a Seat in the House. On the contrary, any sort of Right to a Seat in the House, has always been looked on as a Right that entitles a Man to be examined within the Bar.

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The famous Case of the Lord *Forrester*, who was a Lord of *Scotland*, but not one of the sixteen, is a full Proof of this Rule; and the Case of the two Gentlemen, who were called to read some Records to this House in the Year 1688, and who were for that Purpose admitted to your Table, is a Proof, that an equitable Right to a Seat in the House is as good as a legal. Those two Gentlemen had, 'tis true, been Judges, and the Convention, as well as most of the Nation probably, and I think rightly, were of Opinion, they had been unjustly turned out from being Judges; but suppose they were unjustly turned out, 'tis certain they had then no legal Title to a Seat, nor were they in Possession of any Seat in the House; the only Reason for admitting them to the Table, was on account of the equitable Title they had to Seats upon the Wool-sacks. That Convention indeed was not at first a Parliament, but I am sure none of your Lordships will question their Power, nor will this House, I hope, ever refuse to admit any Proceeding of theirs as a good Precedent in any Case of the same Nature. It was not for any Deficiency of Power that their Acts and Proceedings were confirmed by the next Parliament; that Act of Confirmation was passed only to satisfy the unreasonable Scruples of some Men, and upon this Maxim, that Abundance of Law never breaks the Law; for surely no Man imagines that any of the Acts or Resolutions of the first Parliament after the Revolution, received any new or additional Force from this Act of Confirmation, which was passed in the second. And I must observe, that the Precedent now under our Consideration, was not a Precedent made by the Convention, while it continued a Convention, but after it was declared to be a Parliament; so that it is a Precedent which deserves as much Regard as any Precedent since that Time.

Now, my Lords, as your resolving to examine the *Scotch* Judges at your Table, if you do come to any such Resolution, will be founded upon the Right they have to Seats within your House, therefore their being examined in such a Manner, can never afford a Pretence for any Man in the Kingdom to be examined at your Table, if he has no manner of Right to a Seat within your House: Consequently there is no Ground for saying, that your coming to any such Resolution, or your examining them in any such Man-

Annoro. Geo. II. ner, can subject you or your Posterity to any one Inconvenience. As for the Commissioners of the Great Seal; the first Commissioner of the Treasury, the Chancellor of the Exchequer, or any Privy or Cabinet Counsellor, I am surprized to hear it said, that your Lordships having examined all or either of them at your Bar, can be an Argument for examining the Judges of *Scotland* in the same Manner. Is there any one of these Officers, that, as such, has the least Pretence to a Seat in this House? Therefore, according to the Rule that has been established, and which seems to be agreed on by every one of your Lordships, they had no Pretence to be examined within the Bar; but from that very Rule, the Judges of *Scotland* have a Pretence to be examined within the Bar, because they claim, from the Articles of Union, a Right to sit in the House as Assistants, in the same Manner as the Judges of *England* do; and if they have but an equitable Right, it will certainly be not only a Piece of Injustice, but an Indignity done to them, to examine them at your Bar; for which Reason their Claim of Right ought to be first determined, because upon that, and upon that only, the other Question must necessarily depend.

That the Judges of *Scotland* ought to be summoned as Assistants to this House, that the People of *Scotland* have a Right to have some of their Judges present in this House, appears, my Lords, not only from the two Articles that have been mentioned, by which it is provided, *That the united Kingdom shall be represented by one Parliament; and that the Subjects shall have a Communication of all Advantages not excepted in the Articles*; but likewise from the 18th and 19th Articles of the Union, by which it is expressly provided, *That all Matters of private Right shall be determined by the Laws of Scotland, and before the proper Courts there*; so that though there lies an Appeal to this House, yet in all such Appeals we are, by the Articles of Union, obliged to determine according to those Laws: If we have no Lord nor Assistant in the House, who can inform us what those Laws are, and explain those Passages which may appear a little dark and doubtful? From these Articles, and indeed from the whole Tenor of the Treaty, this Right appears so manifest, that I am surprized as much to hear any Doubts made about it, as I am to hear so many Difficulties started about the Manner of making it effectual.

I shall agree, my Lords, that no Man can come into this House but by his Majesty's Writ of Summons, and in issuing of such Writs it may be true, that the Power of the Crown is limited by Custom. But with respect to that which de-

pend upon the Articles of Union, the Power of the Crown can neither be limited nor directed by the Custom of *England*, or the Custom of *Scotland*; it can be directed by nothing but the Articles themselves, and as those Articles made it necessary to have the Judges of *Scotland* called to the Assistance of this House, as well as the Judges of *England*, surely the King got by those Articles a Power to issue Writs for calling them accordingly. Suppose then a Writ of Summons should be directed to every one of them, it could be attended with no Inconvenience; it would not be necessary for them all to come up here, and to attend the whole Time of the Session; such as pleased only would come, unless your Lordships should, upon any great Occasion, such as the present, make an express Order for the Attendance of all or some of them: The issuing of such Writs could not, therefore, occasion any Surcease of Justice in *Scotland*, or impede or interrupt the Proceedings at Law there, no more than the issuing of such Writs to the Judges of *England* interrupts or prevents the Course of Proceedings at the Assizes, which are held in all Parts of *England* as regularly when the Parliament is sitting, as when it is not.

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For my Part, my Lords, I cannot think there is the least Occasion for any new Act of Parliament in this case, The Act of Parliament, which ratifies and confirms the Articles of Union, has certainly already given to his Majesty a full Power to do that, without which some of those Articles cannot possibly be complied with or fulfilled; and though his Majesty has not yet executed that Power, though there has never been before now a Necessity for his executing that Power, yet he may certainly execute it whenever he thinks proper, or as soon as this House shall, by an Address, desire him to do so. But, suppose a new Act of Parliament were really necessary, that Act of Parliament can depend upon none of the ancient Customs of the Parliaments either of *Scotland* or *England*, nor can any Part of it be founded upon any of those ancient Customs or Usages; the Act to be passed can be founded upon nothing but the Articles of Union, and the Necessity there appears to be for having the Judges of *Scotland* called as Assistants to this House, in order that we may be enabled to do justice to the People of *Scotland*, according to their own Laws, which is what we are bound to do, by the Articles of Union. The Method of holding Parliaments in *Scotland* was quite different from the Method now established for holding the Parliaments of *Great Britain*: There, the Lords and Commons sat together in one House, and as the Judges were capable of being chosen by any County, or City, or Borough in that Kingdom,

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1737. *Ann. Geo. II.* most of them were generally Members of Parliament, so that there was no Necessity or Occasion for calling them by Writs as Assistants. With respect therefore to any new Act of Parliament to be passed on this Occasion, we can take no Direction from any Custom or Usage of the Parliaments of *Scotland*, and consequently can have no Occasion to enquire into any of them. We can have regard to nothing but the Articles of Union, and the Rights and Privileges, or Obligations, which naturally and necessarily arise from them : This can require no tedious Enquiry, nor can any Difficulty arise in the drawing up or passing such an Act, but what may be soon got over, if no Partiality or Animosity be allowed to enter into the Affair, which I am sure we have not the least ground to fear in this House ; and as the other House is very little concerned in the Question, it is to be hoped they would agree to what we should think proper without any great Difficulty. For this Reason I must think, that if an Act of Parliament be necessary for empowering his Majesty to summon the Judges of *Scotland* as Assistants to this House, such an Act may be passed, the Writs may be issued, and the Judges may have taken their Places upon the Wool-sacks, not only before the Session is at an End, but before it may become absolutely necessary for us to examine them ; and then the examining of them can bring us into no Dilemma, nor into the Danger of committing what may be thought a Breach of the Articles of Union, or of agreeing to that which may be thought a sacrificing the Honour and Dignity of the Peerage of *Great Britain*.

But, my Lords, if your Lordships be of Opinion, that all or some of the Judges of *Scotland* ought to be called as Assistants to this House, if you are of Opinion, the People of *Scotland* have a Right to insist upon their Judges being called as Assistants to this House, can the supposed Difficulty you will meet with in enquiring into the Affair, or getting an Act of Parliament passed, be any Reason for your not attempting it ? Suppose you should not be able to bring such an Affair to Perfection in this Session, yet your entering upon it, and making some Progress, will certainly pave the way, and make it easy to pass a proper Bill the next Session. Suppose this Right which the Judges of *Scotland*, in the Name of themselves and the whole People of *Scotland*, now lay claim to, were a great deal more doubtful than I think it is, yet it must be allowed to be a Matter of Right ; and will your Lordships proceed to determine that Right, or to determine any collateral Question, by which the principal Question will at least receive a dangerous Blow, without hearing Parties either by themselves, or their Counsel upon  
the

the Right they contend for? This is so contrary to your Lordships known Justice and Equity, and to your usual Method of Proceeding in Cases of the like Nature, that I cannot allow myself to imagine you will agree to it. If you think you have not Time to enquire into this Affair, or to hear Parties upon the Matter of Right contended for, some Expedient may be found for putting it off, or for avoiding any thing that may look like a Decision of the Affair. What Questions the noble Lords may have to put to the Judges now attending, I do not know; what Lights any Lord can expect from them, I cannot comprehend; but if those Questions are not very material, if the Lights expected from them are not thought to be of great Importance, I wish the noble Lords would pass from the Order made for their Attendance, and give over all thoughts of putting any Questions to them, or of calling them either to the Bar or the Table for that Purpose; for though we have made an Order for their Attendance, though they are come up here in Obedience to that Order, yet we may pass from, or delay calling them till the Session is expired; and I must observe, that if your Lordships should order them to the Bar, and it should then appear you had no Matters of great Importance to interrogate them about, the whole People of *Scotland* will conclude, you called them to the Bar for no other Purpose, but to put an Indignity upon them.

I am glad to hear every noble Lord, that has spoke in this Debate, profess such a Regard for the Articles of Union, and for the People of *Scotland*; I am convinced their Lordships have all spoke sincerely upon this Occasion: This I am convinced of, because I have the Happiness to be personally acquainted with their Lordships; but, my Lords, the People of *Scotland*, who hear nothing of what is said, but of what is done, will, I am afraid, conclude, that we have no regard for them, and as little for the Articles of Union, if they should hear we have determined a Right pretended to be founded upon those very Articles, without so much as hearing any of the Parties concerned, in Vindication of the Right they claim. They look upon themselves as entitled to all the Advantages, Privileges, and Honours, not expressly excepted in the Articles of Union, which the People of *England* are entitled to; and it will be impossible to persuade them, no Injustice has been done them, nor any Indignity put upon them, when they hear, that their Judges were kept standing at your Lordship's Bar, while the Judges of *England* were sitting within the House. This is a Distinction, my Lords, which it is impossible to palliate or excuse; and if you design to keep up that Harmony and Unanimity which

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which ought to be kept up between the two Nations, so lately made one, I am sure you should avoid, as much as possible, all national Distinctions. If the People of *Scotland* should think themselves injured, they cannot, it is true, vindicate themselves as a Nation; they must put themselves upon a footing as Rebels against a legal, established Government, if they should attempt to oppose any thing resolved on by the Parliament of *Great Britain*; but this is owing to the great Confidence they put, at the Time of the Union, in the Honour and Justice of the People of *England*; for they could not then suppose that the Number of Members they were to send to either House, could prevent that House's being guilty of any Partiality or Injustice towards them; and I hope your Lordships will always be extremely cautious of giving the People of *Scotland* the least cause to repent of that Confidence they then put in the Honour and Justice of their Neighbours of *England*.

One of the chief Causes, my Lords, which produced the Union was, we all know, the Establishment of the Protestant Succession. The Settlement of the Crown upon the present Illustrious Family, had been established by Act of Parliament in *England*, long before the Union, but the *Scotch* Parliament could never be induced to agree to it; on the contrary, they seemed to be taking Measures to prevent its being forced upon them. This made every wise Man in *England* as well as *Scotland*, more fond of an Union than otherwise they would have been, and made them more heartily and more cordially endeavour to bring it about. Accordingly, by the very second Article of the Union, the Succession was settled upon the present Illustrious Family, and by virtue of that Settlement we have now the Happiness to see his present Majesty in Possession of the Crown of the united Kingdoms of *England* and *Scotland*. It is therefore the Business, it is the Duty of every Man who is a true Friend to the Illustrious Family now upon the Throne, to endeavour as much as he can, to render the Union agreeable to the People of *Scotland*; because, if they should ever begin to repent of having agreed to the Union, they will naturally begin at the same time to repent of having agreed to the Succession; if they should ever begin to entertain a Desire of being rid of the one, they will of course begin to entertain a Desire of getting rid of the other; and if this should ever come to be the Desire of the People of that Part of the Island in general, it may, in case of a War, be of the most dangerous Consequence to the present Royal Family. For this Reason I think your Lordships should avoid every thing that may look like doing an Injustice to the whole People of *Scotland*, or that may look like making

making an invidious Distinction between that People and the People of *England*; and as I think the making of any Difference between the Judges of *Scotland* and the Judges of *England*, or the shewing of any less Respect to the former than you usually do to the latter, will be looked on, by the whole People of *Scotland*, not only as an invidious Distinction between the two Nations, but as a real Indignity put upon them, therefore, I hope it will be avoided, if possible; which may very easily be done, if your Lordships have no Matters of very great Importance to interrogate these Judges about.

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But, suppose, my Lords, you have Questions of the utmost Importance to put to them; suppose you think it absolutely necessary to examine them in relation to the Affair of *Porteous*; and suppose you think it absolutely impossible for you now to take Time to enquire, whether they have any Right, by the Articles of Union, to be called as Assistants to this House, and as such to have Places upon the Wool-sacks, according to their Ranks, next to the Judges of *England*; yet as this Claim of theirs is a Matter of Right, as it is a Matter of Right in which the People of *Scotland* have a very deep Concern, I hope your Lordships will not determine it without hearing Parties very fully upon it; and therefore, if you now come to a Resolution to examine them at your Bar, I hope you will add a saving Clause to that Resolution, saving and reserving to the Judges of *Scotland* all manner of Right which they may have, or lay claim to by the Articles of Union, for being called by his Majesty's Writ as Assistants to this House, and for being placed as such upon the Wool-sacks according to their Ranks, next to the Judges of *England*.

To conclude, my Lords, I wish this Affair had been expressly and particularly regulated by the Articles of Union; I wish a proper Clause had been added, expressly empowering his Majesty to call the Judges of *Scotland* as Assistants to this House, and to place them upon the Wool-sacks according to their Ranks, next to the Judges of *England*: If it had been then thought of, I am convinced it would have been readily agreed to; considering the Circumstances the two Nations were then in, I am sure none of your Lordships can think this piece of Respect, which could not possibly be of any Disadvantage to the People of *England*, and which was so necessary for the People of *Scotland*, would have prevented an Union so much for the Advantage of both Nations. But in Treaties of such a Nature, it is impossible to foresee, or to provide for all the Questions that may afterwards occur; the Spirit and Intention of the Treaty must be considered, in order to form from thence a Rule for the deciding any Question that may afterwards arise, which does not appear to

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have been expressly provided for in the Treaty ; and to me it appears evident that, by the Spirit and whole Tenor of the Treaty of Union, it was intended, that no Distinctions should afterwards be made between the People of the two Nations, or between any Rank of Men in one, and the same Rank of Men in the other, but such as were expressly regulated in the Treaty ; or that any Advantages should be enjoyed by the People of the one Country, but what should be enjoyed by the People of the other, unless otherwise stipulated in the Treaty ; and as it is a very great Advantage to the People of *England*, to have their Judges called as Assistants to this House, your Lordships must allow the People of *Scotland* are entitled to the same Advantage by the Articles of Union ; you must allow that no Distinction ought to be made between the Judges of the supreme Courts in *Scotland*, and the Judges of the supreme Courts in *England* ; therefore, I think, you cannot agree to the Resolution that has been proposed, I hope you will not agree to it, without the saving Clause I have mentioned.

Division upon the  
Question,

This was the Substance of the Debate upon this Occasion ; and the Question being at last put upon the Motion for resolving as before mentioned, to examine the *Scotch* Judges at the Bar, it was, upon a Division, carried in the Affirmative, by 48 to 37. Then the House being resumed, the Lord *Delaware*, who was in the Chair, reported the Resolution of the Committee, which, after some little Debate, was carried in the Affirmative, upon a Division as follows, *viz.*

And the Report.

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Speakers upon  
the Question a-  
bout examining  
the *Scotch*  
Judges.

After which the three *Scotch* Judges were called to the Bar, where they appeared in their Robes, and some few Questions were asked them.

The principal Speakers in the Debate for calling the *Scotch* Judges to the Bar, were, the Earl of *Abingdon*, the Earl of *Aylesford*, the Earl of *Chesterfield*, the Earl of *Strafford*, the Earl of *Winchelsea*, the Lord Chancellor, Lord *Delaware*, and Lord *Bathurst* ; and the principal Speakers against it, were, the Duke of *Argyle*, the Earl of *Isle*, the Duke of *Newcastle*, the Lord *Hervey*, the Duke of *Atbol*, the Earl of *Crawford*, and the Earl of *Finlater*.

Proceedings on  
*Porteous's* Bill.

The Lord Provost and the City of *Edinburgh* having been admitted to be heard by their Counsel against the Bill, upon its being read a second time in the House of Lords, that Hearing began on *Wednesday*, May 4, and was continued every Day till *Saturday*, the 7th, and then the Bill was committed for *Monday* ; when it passed in the Committee ; and on *Wednesday*, May

May 11, was read a third time, and passed in that House, on Anno 10. Geo. II. a Division, 54 *Contents*, to 22 *Not Contents*. 1737.

In the Debate on this Affair, in the House of Lords, the following Speeches were made, *viz.*

My Lords, I shall be far from saying any thing that may Duke of Argyle, seem to favour the Actors of a Crime, than which, from the Circumstances of Barbarity that attended it, and from the Contempt of Majesty it expressed, no Age or Country ever produced a blacker; neither shall I pretend to defend the Abilities, as a Magistrate, of the unfortunate Person who is the Subject of Part of the Bill now depending; but it is my Opinion, that if any thing can be justly charged upon him from the Evidence that has been laid before this House, it is not Treachery, but Folly, and that he rather is an Object of Pity than Censure. I must, however, take Notice of what has been said, with respect to the Lenity of this House, in the present Proceedings against the Lord Provost and Citizens of *Edinburgh*. Really, for my own Share, I cannot think of a Proceeding more harsh or unprecedented than the present; as I believe there is no Instance of the whole Weight of Parliamentary Indignation (for such, my Lords, I call a Proceeding by a Bill *ex post facto*) falling upon any single Person, far less upon any Community, for Crimes that are within the Reach of the inferior Courts of Justice to punish; for this Reason, my Lords, I say, that if the Lord Provost and Citizens of *Edinburgh* should suffer in the Terms of the present Bill, the Proceeding against them is so far from deserving the Name of Lenity, that they will suffer by a cruel, an unjust, and a fantastical Proceeding. — A proceeding, my Lords, of which very bad Use may be made, if ever this Nation should have the Misfortune to fall under a partial, self-interested Administration. That Part of the present Bill which affects the Citizens of *Edinburgh*, ought to be the principal Concern of every Nobleman in this House. For, tho' we may determine the Properties of private Persons, and may adjust the Privileges of Communities, we cannot infringe the Rights of Nations. To pass the present Bill, my Lords, in the Shape it is now in, is what I will be bold to say, and I say it of my own Knowledge and of my own Experience (but with all the Respect that is due to this august Assembly) it is what even the whole Legislative Body cannot do. — I was in the Parliament of *Scotland* when that Part of the Treaty of Union relating to the Privileges of the Royal Burghs was settled, and, my Lords, these Privileges were put upon the same Footing with Religion, that is, they were not alterable by any subsequent Parliament of *Great Britain*. It is true, some moved,

1737. Cc 2 that

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that they should be submitted to such Alterations, as the Parliament of *Great Britain* should in time coming, for good Reasons, think fit to make. But, my Lords, after a full Debate, it was carried, that they should not be subject to any such Alterations. The Nation of *Scotland*, in all the Proceedings at that Time, treated with *England* as an independent and free People; and as that Treaty, my Lords, had no other Guarantee for the due Performance of its Articles, but the Faith and Honour of a *British* Parliament, it would be both unjust and ungenerous, should this House agree to any Proceeding that has the least Tendency to infringe it.

That many, nay most of the Articles of the Treaty of Union, are subject to be altered by a *British* Parliament, I shall not deny. Nor shall I dispute, but that if the People, or if the Majority of the People of *Scotland* should, for good Reasons, petition for an Alteration in this, or any other Article, I say, I shall not dispute but that this House might, and ought to make the desired Alteration: But I believe no Lord in this House will say, this is the present Case.

It has been much insisted on, that the Gate in question must necessarily be demolished, in order to leave to the King's Forces a free Entry into the City of *Edinburgh* when any Exigency requires them. No one, my Lords, is more sensible than I am, how reasonable it is that the King's Forces should have free Access, to suppress every Commotion of the like Nature with that now under our Consideration. But, I believe, I can propose a Method, by which every Lord in this House will be satisfied how that End may be answered more effectually, and without any of the bad Consequences attending it, that probably will attend the demolishing the Gate in question.

The Castle of *Edinburgh*, my Lords, is the King's House, and no one can doubt his Majesty's Power to send as many Forces into it as he pleases; should we therefore petition his Majesty, that the Barracks may be enlarged, and the Number of Troops in Garrison increased, there is no room to question but that the Ends proposed will be more effectually answered than they can be by any Expedient laid down in the present Bill.

The *Nether-bow Gate*, my Lords, stands in a very narrow Street; near it are always a great Number of Coaches and Carts. Let us suppose another Insurrection is to happen; in that Case, my Lords, should the Conspirators have the Presence of Mind to barricade the Street with these Carriages, as may be done by a Dozen of Fellows, I affirm, and I appeal for the Truth of what I advance to any Man of my Trade, who knows the Situation of the Place, if 500 Men  
may

may not then keep out 10,000, for a longer Time than that *Annoro. Geo. II.* in which the Mob executed their bloody Designs upon *Porteous*. Besides, my Lords, I think it has been made out by the Gentlemen against the Bill, that the Gate in question is absolutely necessary for collecting the City Revenue, and for preventing Smugglers. In that Case, my Lords, I don't see how this Gate can be taken away without damaging not only the Revenue of the City, but that of the Crown. Thus much, my Lords, I have thought fit to say, with respect to that Part of the Bill that relates to the demolishing of the City-Gate. 737.

I shall now proceed to the other Part, I mean that of taking away the Guard; but perhaps it will be necessary to make some Remarks on the Right by which the City of *Edinburgh* enjoys this Guard: It was confirmed to them by a Parliament of *Scotland*, under the immortal Deliverer of our Religion and Liberties, King *William*; a Parliament, my Lords, than which no Body of Men ever shewed greater Zeal in acquiring, or greater Resolution in defending, these invaluable Blessings. And such was their Sense of the Services of the Town of *Edinburgh*, that it is inserted in the Preamble of the Bill, that the said Guard was granted to the Citizens of *Edinburgh*, on account of the Zeal they discovered when Religion and Liberty were at stake. Will such a Parliament, my Lords, and such a King, plead nothing in their Behalf; and must one wrong Step, allowing it to be such, forfeit the Merit of a long Tract of Services? When I was honoured with the Command of the Forces in *Scotland* against the Rebels, in the Year 1715, and at the Head of those numerous Armies and Squadrons, for so our *Gazettes* represented them to be, which amounted to about 1700 Men, I had Information that a Body of the Rebels had ventured to *Leith*, and that they designed to attack the City of *Edinburgh*. Though I had not a Troop with me at that Time, I saw this very Guard, which you are to break by this Bill, draw out, and march down against the Rebels in as good Order, and with as good a Shew of Resolution as I ever beheld in any Body of Men. The Effect was, that the Rebels altered their Design, and advanced no farther; thanks to them they did not, they having the Odds of five fighting Men to one. This was not all the Service they did at that important Juncture; the Rebels had gained over a Serjeant of the Garrison in the Castle of *Edinburgh*, who promised to assist them in surprizing the Garrison; and had it not been that the Ladders they made use of proved too short, they must have succeeded: Which would at that Time have given a great Blow to the King's Affairs in that Country;



Anno 10. Geo. II. Country ; and it was entirely owing to the Vigilance of the City-Guard, that the Conspirators were discovered, and many of them seized.

1737.

But, my Lords, setting aside all these Considerations, I think there are some of a private Nature, that ought not a little to influence your Lordships in the present Affair. You have examined into the Conduct and Usefulness of the City-Guard of *Edinburgh*: You have found, that on many Occasions, it has been of great Use ; nay, in the present unhappy Case, your Lordships seem to approve of the Conduct of the Gentleman whose Turn it was to command the Night in which *Porteous* was murdered. Now my Lords, I would gladly know why the other two Companies which composed that Guard, and with whom no Fault is pretended to be found, should be equal Sufferers with those who were that Night upon Duty, whom the present Bill supposes to have been guilty ; and why the Captain commanding on that Night, who appears not to have been guilty, should have his Bread taken from him ? Some of your Lordships have been pleased to mention the great Lenity with which this Bill is attended ; but where the Lenity is of taking a Gentleman's Bread from him, after having done his Duty honestly, I cannot comprehend ; at least if I may judge of another by myself, I was so far from taking it as a Favour, that I looked on it as the greatest Hardship I ever met with in the whole Course of my Life, when I was obliged to resign to another a Commission in which I had honestly and faithfully served. Some Regard, my Lords, ought likewise to be had to the private Men, who are to be deprived of their Bread ; and the present Bill makes no Provision for them, though it appears by the Evidence laid before you Lordships that they were entirely innocent.—Nor is any Care taken by it of having the City of *Edinburgh* provided with another Watch ; and, my Lords, I conceive there is no City, of an equal Largeness with that of *Edinburgh*, that can be without a regular Watch of some Kind or other.

I must now observe, my Lords, that great Zeal has appeared in this House to pass the present Bill into an Act, which is to affect a Person, whose only Crime seems to have been, that he was unfit for a Trust that requires an active and a vigilant Man ; and against the Citizens of *Edinburgh*, who are only guilty in not foreseeing what it was impossible for them to have foreseen ; and yet, my Lords, no Bill has been brought in to bring the Persons who have been guilty of that barbarous Murder to Justice : These, my Lords, ought to be the immediate Objects of the Resentment of  
this

this House ; for where such desperate Enthusiasts are harboured, no State can be secure of its Peace, and no private Person of his Property. Great Insinuations, my Lords, have been made, that this and many other Tumults that have frequently happened of late in the united Kingdom, have been owing to the Oppression of the Magistrate : For my Part, my Lords, I have heard of no particular Acts of Oppression, and I believe I may venture to say, neither has any of your Lordships, as we must all have done if any such had been. But, my Lords, can Riots proceed from no other Cause but from the Oppression of the Magistrate? Have People no other Motives to Rebellion but the Suggestions of Despair? I believe, my Lords, we may find, from the History of past Times, that they have always had, and from the Experience of the present, that they still continue to have other Motives.

Anno 10. Geo. II.  
1737.

This riotous and rebellious Spirit of theirs, does not proceed from any Oppression in the Governors or civil Magistrates of that Country, as has been strongly insinuated, but from a few fanatical Preachers, lately started up in that Country, who by their Sermons and otherwise, instil into the Minds of the Vulgar and Ignorant, such enthusiastical Notions as are inconsistent with all Government, by making Sedition and Rebellion a Principle of their Religion. From this Cause I am inclined to think, the Tumult at *Edinburgh* proceeded ; and to this is owing that ill-judged Fidelity of the Guilty towards one another, by which the Secret was, before the Execution, made impenetrable, and by which the Discovery of the Persons concerned has since been rendered impossible. But of the Inhabitants of *Edinburgh*, I am convinced, there are very few tainted with such Principles, because they seldom or never hear any such Doctrines.

I have now, my Lords, given my Opinion with respect to the present Bill, so far as I have had Opportunity to know any thing of its Tendency, or the Evidence upon which it is founded ; and I think, that if we consent to the passing it into a Law, at least in the Shape it is now in, we shall do what is both imprudent and unjust.

The Lord *Hardwick*.

My Lords, as this House has agreed to the Preamble of Lord *Hardwick*'s Bill now before us, I believe it will be found very extraordinary, if any thing were inserted in the Body of the Bill that should contradict the Preamble. This we must do, if we agree to the Motion made by the noble Peer who spoke last ; and thus we shall send down to the House of Commons a Bill of Pains and Penalties, where no Pains and Penalties are implied ; or else a new Bill must be brought in, a new Preamble,

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1737.

Preamble drawn up, and a new Course of Evidence gone through, which at this Time of the Session would be impracticable. Besides all this, if the Expedient proposed by the noble Peer was to be followed, if by suffering the City Gate to remain as before the Riot happened, the Barracks of the Castle were to be enlarged, so as to contain a greater Number of Soldiers in Garrison there; we must come to a Resolution of addressing his Majesty for that Purpose; and by these Means all that we have been doing in this Affair, for near these four Months, has been quite unnecessary, and must go for nothing. Every Peer in this House must be sensible how ill this would sound at home, and how ridiculous it would appear abroad. I am far from disputing the good Services the Town of *Edinburgh* has formerly done; but the Merit of Ancestors in a former Age, can never atone for the Degeneracy of their Posterity in the present. As I very much respect the noble Peer who spoke last, I shall be likewise far from doubting of the Truth of what he has advanced, with regard to the Tenderness which the last Parliament of *Scotland* expressed for the Rights of the Royal Burghs in that Kingdom: I say, I shall be far from doubting it, because the noble Lord advances it from his own Knowledge. But these Privileges must be always looked upon as Privileges which the Citizens of *Edinburgh* immemorially enjoyed, and of which they could not be deprived without injuring them, not only as Citizens of *Edinburgh*, but as Subjects of the Kingdom. Had a Bill been brought into Parliament for breaking their Charter, dissolving their Corporation, or taking from them their Right of sending a Representative to Parliament; that, indeed, had been striking at Essentials, and there would have been great Weight in what was objected by the noble Lord. But it is agreed upon all Hands, that the Town-Guard is of a very late Standing; and if so, it never can be reckoned among their ancient and immemorial Privileges. Nor can I see how either the demolishing a Gate, or the keeping it open, can affect them. It having been proved, my Lords, that it was owing to this Gate-being shut that the barbarous Tumult happened, or at least that it was not suppressed; the preventing any such Tumult for the future, is of much greater Consequence, both to the Crown and to the City, than any Loss that the Revenue of either can suffer by its being taken away. Nor, indeed, do I see any Loss that can ensue, if a Watch of the like Nature with the Night-watch in *London* were appointed to stand there so many Hours each Night, as the Gate used to be kept shut. This Method, we find, is very effectual in other Cities.

I believe

I believe, my Lords, there have been very few Bills Ann 10. Geo. II.  
brought into this House with which your Lordships, how- 1737.  
ever differing in Opinion in other Respects, will more heartily concur, than with the present. We have seen Bills of this Kind before, and we have heard many plausible Arguments advanced against them; but I cannot imagine how any one, who wishes well to his King and his Country, can look upon the present Bill, which is calculated only to punish a visible Neglect of the Interest of both, as a Jobb, and refuse his Concurrence to it on that Account. The Time was, indeed, when Races of Popularity were run, and when gaining a Borough or a County might have been the Motives of Dissent from a Bill of this Nature; but I hope there are no such Persons now-a-days, at least I hope there are none among us, who will sacrifice the Honour of Government in general to any Jobb, or to any selfish Views whatever. Some think to govern Nations by a Party, without any View to the Good of Government in general; but it is a pitiful Way of governing. A Man who acts zealously for the Good of his Country, will make the Rule of his Conduct the Interest of the Whole, which is as much supported by the Maxims of punishing open Violations of, as rewarding particular Services done to Governments in general. Whoever, I say, acts in this Manner, acts for the Good of the Whole.

He was replied to by his Grace the Duke of *Argyle*, who spoke to this Effect.

I did not intend to have troubled your Lordships with Duke of Argyle  
adding any thing to what I have said upon the Subject of the Bill now before us; but I find myself so plainly pointed at, in the latter End of the Speech of the noble Lord who spoke last, that I think I am obliged to say something, that may acquit me of the Imputation that his Words insinuate. I should be very glad if I have mistaken the noble Lord's Design; which I have the more Reason to hope I have done, because I have never failed to express the greatest Friendship, I may say, Love and Esteem for his Person; as I have always entertained the highest Respect for his Station and Character. My Lords, I am no Minister, I never was a Minister, and I never will be one. Time was when I might have been a Piece of a Minister, but I was too sensible of my own Want of Capacity to engage in any State Affairs; and I thank God, I had always too great a Value for those few Abilities which Nature has given me, to employ them in doing any Drudgery, or any Jobb of what Kind soever. I have, ever since I set out in the World, (and I believe few set out more early) served my Prince with my Tongue, I have served him with any little Interest I had, and I have served him in my

Anno 10. Geo. II. 1737. Trade ; and were I to-morrow to be stripped of all the Employments which I have endeavoured honestly and faithfully to deserve, I would serve him again to the utmost of my Power, and to the last Drop of my Blood. Can any Man say, my Lords, that ever I ran the Races of Popularity, or that ever I was engaged in any dirty Jobb of Elections, even when I met with Treatment, and was in Circumstances which, perhaps, one would have thought might justify such a Conduct ? And can it be suspected that I will now be dipt in any such ? I have opposed the present Bill, my Lords, because I look upon it to be an Invasion upon Property in that Part of the Kingdom. And on that Account my Lords, were it upon no other, I have more Reason to oppose it, than any Man in this House, nay perhaps, than any Man in the united Kingdom : Because there is none whose Property is, there, so extensive as my own. I likewise look upon it, my Lords, as an Encroachment upon Liberty, and on this Account, no Man has better Reason to oppose it. My Family, my Lords, has been always persecuted, and has often bled under Tyrants, and never had a Breathing-time but that of Liberty ; and should Bills of this Nature pass into Laws, there is reason to be afraid of their Consequences, with respect to our Liberties.

The Lord *Hardwick* reply'd to the following Effect.

Lord *Hardwick*.

That he observed with the greatest Concern, that the noble Lord who spoke last had mistaken his Meaning ; that he entertained the highest Opinion of that noble Lord's Candour, Integrity and Abilities, and that it never was his Intention to insinuate the least Thing to the Disadvantage, either of the noble Peer, or any of his Relations. That the Words which had given the noble Peer Offence, were only to be understood of what had been practised in former Times, and what possibly may be in the present ; but that the noble Lord was the last Man in the World to whom he would have them applied.

On Monday May 16, the said Bill, in the Form and with the Title as before-mentioned, was sent down to the House of Commons, where, it occasioned warm Debates, which see in *Chand. Hist. Anno 10. Geo. II. 1736-7. pag. 506. to 545.*

Debate on the  
Play-House Bill.

The only Remarkable of this Session, which remains to be taken Notice of, is contained in the Proceedings upon the Bill, to explain and amend so much of an Act made in the 12th Year of the Reign of *Q. Anne*, entituled, *An Act for reducing the Laws relating to Rogues, Vagabonds, sturdy Beggars and Vagrants, into one Act of Parliament ; and for the more effectual punishing such Rogues, Vagabonds, sturdy Beggars and Vagrants,*

grants; and sending them whither they ought to be sent, as re- Anno 10. Geo. II.  
lates to common Players of Interludes. This Bill, which was 1737.  
passed into a Law, and remains still in Force, was ordered  
by the House of Commons to be prepared and brought in  
on *Friday* the 20th of *May*; and was occasioned by a Farce  
called the *Golden Rump*, which had been brought to the  
then \* Master of the Theatre in *Lincoln's-Inn-Fields*, who,  
upon perusal, found it was designed as a Libel upon the Go-  
vernment, and therefore, instead of having it acted, he  
carried it to a Gentleman concerned in the Administration,  
and he having communicated it to some other Members of  
the House of Commons, it was resolved to move for leave to  
bring in a Bill for preventing any such Attempt for the fu-  
ture; and the Motion being, as we have said, complied with  
by that House upon the 20th of *May*, the Bill was brought  
in on *Tuesday* the 24th, and passed through both Houses  
with such Dispatch, that it was ready for the Royal Assent  
by *Wednesday* the 8th of *June* following; and accordingly  
received the Royal Assent on *Tuesday* the 21st, when his  
Majesty put an End to this Session of Parliament.

In both Houses there were long Debates, and great Op-  
position to this Bill; in every step it made; and, in the House  
of Lords the following is the Substance of what was said by  
the Earl of *Chesterfield* against it, viz.

*My Lords,*

THE Bill now before you I apprehend to be of a very ex- of *Chesterfield*  
traordinary, a very dangerous Nature. It seems  
designed not only as a Restraint on the Licentiousness of the  
Stage, but it will prove a most arbitrary Restraint on the Li-  
berty of the Stage; and, I fear, it looks yet farther, I fear it  
tends towards a Restraint on the Liberty of the Press, which will  
be a long Stride towards the Destruction of Liberty itself. It is  
not only a Bill, my Lords, of a very extraordinary Nature, but  
it has been brought in at a very extraordinary Season, and  
pushed with most extraordinary Dispatch. When I consid-  
ered how near it was to the End of the Session, and how  
long this Session had been protracted beyond the usual Time  
of the Year; when I considered that this Bill passed thro'  
the other House with so much Precipitancy, as even to get  
the Start of a Bill which deserved all the Respect, and all  
the Dispatch, the Forms of either House of Parliament could  
admit of, it set me upon enquiring, what could be the  
1737. D d 2 Reason

\* One Mr. *Giffard*, who had removed thither with a Company of Players,  
from *Goodman's-Fields* where he had a Theatre, which was silenced by  
this very Act.

Ann. 10. Geo. II.  
1737.

Reason for introducing this Bill at so unseasonable a Time, and pressing it forward in a Manner so very singular and uncommon. I have made all possible Enquiry, and as yet, I must confess, I am at a loss to find out the great Occasion. I have, 'tis true, learned from common Report without Doors, that a most seditious, a most heinous Farce had been offered to one of the Theatres, a Farce for which the Authors ought to be punished in the most exemplary Manner: But what was the Consequence? The Master of that Theatre behaved as he was in Duty bound, and as common Prudence directed: He not only refused to bring it upon the Stage, but carried it to a certain honourable Gentleman in the Administration, as the surest Method of having it absolutely suppressed. Could this be the Occasion of introducing such an extraordinary Bill, at such an extraordinary Season, and pushing it in so extraordinary a Manner? Surely no: — The dutiful Behaviour of the Players, the prudent Caution they shewed upon that Occasion, can never be a Reason for subjecting them to such an arbitrary Restraint: It is an Argument in their Favour, and a material one, in my Opinion, against the Bill. Nay farther, if we consider all Circumstances, it is to me a full Proof that the Laws now in being are sufficient for punishing those Players who shall venture to bring any seditious Libel upon the Stage, and consequently sufficient for deterring all Players from Acting any thing that may have the least Tendency towards giving a reasonable Offence.

I do not, my Lords, pretend to be a Lawyer, I do not pretend to know perfectly the Power and Extent of our Laws, but I have conversed with those that do, and by them I have been told, that our Laws are sufficient for punishing any Person that shall dare to represent upon the Stage, what may appear, either by the Words or the Representation, to be Blasphemous, Seditious, or Immoral. I must own indeed, I have observed of late a remarkable Licentiousness in the Stage. There have but very lately been two Plays acted, which one would have thought, should have given the greatest Offence, and yet both were suffered to be often represented without Disturbance, without Censure. In \* one, the Author thought fit to represent the three great Professions, Religion, Physic, and Law, as inconsistent with common Sense: In the † other, a most tragical Story was brought upon the Stage, a Catastrophe too recent, too melancholy, and of too solemn a Nature, to be heard of any where but from the Pulpit. How these Pieces came to pass unpunished, I do not know: If I am rightly informed, it was not

\* *Pasquin* a Comedy.

† *King Charles I.* a Tragedy.

not for want of Law, but for want of Prosecution, without Anno 10. Geo. II.  
 which no Law can be made effectual: But if there was any  
 neglect in this Case, I am convinced it was not with a De-  
 sign to prepare the Minds of the People, and to make them  
 think a new Law necessary.

1737.

Our Stage ought certainly, my Lords, to be kept within due Bounds, but for this, our Laws, as they stand at present, are sufficient; If our Stage-Players at any time exceed those Bounds, they ought to be prosecuted, they may be punished: We have Precedents, we have Examples of Persons having been punished for things less Criminal, than either of the two Pieces I have mentioned. A new Law must therefore be unnecessary, and in the present Case it cannot be unnecessary without being dangerous: Every unnecessary Restraint on Licentiousness is a Fetter upon the Legs, is a Shackle upon the Hands of Liberty. One of the greatest Blessings we enjoy, one of the greatest Blessings a People, my Lords, can enjoy, is Liberty;—but every Good in this Life has its Allay of Evil:—Licentiousness is the Allay of Liberty: It is an Ebullition, an Excrescence,——it is a Speck upon the Eye of the Political Body, which I can never touch but with a gentle,——with a trembling Hand, lest I destroy the Body, lest I injure the Eye upon which it is apt to appear. If the Stage becomes at any time licentious, if a Play appears to be a Libel upon the Government, or upon any particular Man, the King's Courts are open, the Law is sufficient for punishing the Offender; and in this Case the Person injured has a singular Advantage; he can be under no Difficulty to prove who is the Publisher; the Players themselves are the Publishers, and there can be no want of Evidence to convict them.

But, my Lords, suppose it true, that the Laws now in being are not sufficient for putting a check to, or preventing the Licentiousness of the Stage; suppose it absolutely necessary some new Law should be made for that Purpose; yet it must be granted, that such a Law ought to be maturely considered, and every Clause, every Sentence, nay every Word of it well weighed and examined, lest, under some of those Methods presumed or pretended to be necessary for restraining Licentiousness, a Power should lie concealed, which might be afterwards made use of for giving a dangerous Wound to Liberty. Such a Law ought not to be introduced at the Close of a Session, nor ought we, in the passing of such a Law, to depart from any of the Forms prescribed by our Ancestors for preventing Deceit and Surprise. There is such a Connexion between Licentiousness and Liberty, that it is not easy to correct the one, with-  
 out



Anno 10. Geo. II. 1737. out dangerously wounding the other : It is extremely hard to distinguish the true Limit between them : Like a changeable Silk, we can easily see there are two different Colours, but we cannot easily discover where the one ends, or where the other begins. — There can be no great and immediate Danger from the Licentiousness of the Stage : I hope it will not be pretended, that our Government may, before next Winter, be overturned by such Licentiousness, even though our Stage were at present under no sort of legal Controul. Why then may we not delay till next Session passing any Law against the Licentiousness of the Stage ? Neither our Government can be altered, nor our Constitution overturned, by such a Delay ; but by passing a Law rashly and unadvisedly, our Constitution may at once be destroyed, and our Government rendered arbitrary. Can we then put a small, a short-lived Inconvenience in the Balance with perpetual Slavery ? Can it be supposed, that a Parliament of *Great Britain* will so much as risk the latter, for the sake of avoiding the former ?

Surely, my Lords, this is not to be expected, were the Licentiousness of the Stage much greater than it is, were the Insufficiency of our Laws more obvious than can be pretended ; but when we complain of the Licentiousness of the Stage, and of the Insufficiency of our Laws, I fear we have more Reason to complain of bad Measures in our Polity, and a general Decay of Virtue and Morality among the People. In public as well as private Life, the only Way to prevent being ridiculed or censured, is to avoid all ridiculous or wicked Measures, and to pursue such only as are virtuous and worthy. The People never endeavour to ridicule those they love and esteem, nor will they suffer them to be ridiculed : If any one attempts it, the Ridicule returns upon the Author ; he makes himself only the Object of public Hatred and Contempt. The Actions or Behaviour of a private Man may pass unobserved, and consequently unapplauded, uncensured ; but the Actions of those in high Stations, can neither pass without Notice, nor without Censure or Applause ; and therefore an Administration, without Esteem, without Authority among the People, let their Power be never so great, let their Power be never so arbitrary, will be ridiculed : The severest Edicts, the most terrible Punishments, cannot prevent it. If any Man therefore thinks he has been censured, if any Man thinks he has been ridiculed, upon any of our public Theatres, let him examine his Actions he will find the Cause, let him alter his Conduct he will find a Remedy. As no Man is perfect, as no Man is infallible, the greatest may err, the most circumspect may be

be guilty of some Piece of ridiculous Behaviour. It is not Anno 10. Geo. II.  
 Licentiousness, it is an useful Liberty always indulged the 1737.  
 Stage in a free Country, that some great Men may there  
 meet with a just Reproof, which none of their Friends will  
 be free enough, or rather faithful enough, to give them. Of  
 this we have a famous Instance in the *Roman* History. The  
 great *Pompey*, after the many Victories he had obtained, and  
 the great Conquests he had made, had certainly a good Title  
 to the Esteem of the People of *Rome*: yet that great Man,  
 by some Error in his Conduct, became an Object of general  
 Dislike; and, therefore, in the Representation of an old  
 Play, when *Diphilus*, the Actor, came to repeat these  
 Words, *Nostra miseria tu es Magnus*, the Audience imme-  
 diately applied them to *Pompey*, who at that Time was as  
 well known by the Name *Magnus*, as by the Name *Pompey*,  
 and were so highly pleased with the Satire, that, as *Cicero*  
 says, they made the Actor repeat the Words a hundred Times  
 over. An Account of this was immediately sent to *Pompey*,  
 who, instead of resenting it as an Injury, was so wise as to  
 take it for a just Reproof: He examined his Conduct, he  
 altered his Measures, he regained by Degrees the Esteem of  
 the People, and then he neither feared the Wit, nor felt the  
 Satire of the Stage. This is an Example which ought to be  
 followed by great Men in all Countries. Such Accidents will  
 often happen in every free Country, and many such would  
 probably have afterwards happened at *Rome*, if they had con-  
 tinued to enjoy their Liberty; but this Sort of Liberty in  
 the Stage came soon after, I suppose, to be called Licentious-  
 ness; for we are told that *Augustus*, after having established  
 his Empire, restored Order in *Rome* by restraining Licentious-  
 ness. God forbid! we should in this Country have Order  
 restored, or Licentiousness restrained, at so dear a Rate as  
 the People of *Rome* paid for it to *Augustus*.

In the Case I have mentioned, my Lords, it was not the  
 Poet that wrote, for it was an old Play; nor the Players that  
 acted, for they only repeated the Words of the Play, it was  
 the People who pointed the Satire; and the Case will always  
 be the same: When a Man has the Misfortune to incur the  
 Hatred or Contempt of the People, when public Measures  
 are despised, the Audience will apply what never was, what  
 could not be designed as a Satire on the present Times.  
 Nay, even though the People should not apply, those who  
 are conscious of Guilt, those who are conscious of the Wick-  
 edness or Weakness of their Conduct, will take to themselves  
 what the Author never designed. A public Thief is as apt  
 to take the Satire, as he is apt to take the Money, which  
 was never designed for him. We have an Instance of this  
 in

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in the Case of a famous Comedian of the last Age; a Comedian who was not only a good Poet, but an honest Man, and a quiet and good Subject: The famous *Moliere*, when he wrote his *Tartuffe*, which is certainly an excellent and a good moral Comedy, did not design to satirize any great Man of that Age; yet a great Man in *France* at that Time, took it to himself, and fancied the Author had taken him as a Model for one of the principal, and one of the worst Characters in that Comedy: By good Luck he was not the Licenser, otherwise the Kingdom of *France* had never had the Pleasure, the Happiness I may say, of seeing that Play acted; but when the Players first proposed to act it at *Paris*, he had Interest enough to get it forbid. *Moliers*, who knew himself innocent of what was laid to his Charge, complained to his Patron the Prince of *Conti*, that, as his Play was designed only to expose Hypocrisy, and a false Pretence to Religion, 'twas very hard it should be forbid being acted; when at the same Time they were suffered to expose Religion itself every Night publicly upon the *Italian Stage*: To which the Prince wittily answered, *'Tis true, Moliere, Harlequin ridicules Heaven, and exposes Religion; but you have done much worse, — you have ridiculed the first Minister of Religion.*

I am as much for restraining the Licentiousness of the Stage, and every other Sort of Licentiousness, as any of your Lordships can be; but, my Lords, I am, I shall always be, extremely cautious and fearful of making the least Encroachment upon Liberty; and therefore, when a new Law is proposed against Licentiousness, I shall always be for considering it deliberately and maturely, before I venture to give my Consent to its being passed. This is a sufficient Reason for my being against passing this Bill at so unseasonable a Time, and in so extraordinary a Manner; but I have many Reasons for being against passing the Bill itself, some of which I shall beg Leave to explain to your Lordships. The Bill, my Lords, at first View, may seem to be designed only against the Stage; but to me it plainly appears to point somewhere else. It is an Arrow that does but glance upon the Stage, the mortal Wound seems designed against the Liberty of the Press. By this Bill you prevent a Play's being acted, but you do not prevent its being printed; therefore, if a Licence should be refused for its being acted, we may depend on it, the Play will be printed. It will be printed and published, my Lords, with the Refusal in capital Letters on the Title Page. People are always fond of what's forbidden. *Libri prohibiti* are in all Countries diligently and generally sought after. It will be much easier to procure a Refusal.

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than it ever was to procure a good House, or a good Sale; therefore we may expect, that Plays will be wrote on Purpose to have a Refusal: This will certainly procure a good House, or a good Sale: Thus will Satires be spread and dispersed through the whole Nation, and thus every Man in the Kingdom may, and probably will, read for Sixpence; what a few only could have seen acted, and that not under the Expence of half a Crown. We shall then be told, What! will you allow an infamous Libel to be printed and dispersed, which you would not allow to be acted? You have agreed to a Law for preventing its being acted, can you refuse your Assent to a Law for preventing its being printed and published? I should really, my Lords, be glad to hear what Excuse, what Reason one could give for being against the latter, after having agreed to the former; for, I protest, I cannot suggest to myself the least Shadow of an Excuse. If we agree to the Bill now before us, we must, perhaps next Session, agree to a Bill for preventing any Play's being printed without a Licence. Then Satires will be wrote by way of Novels, secret Histories, Dialogues, or under some such Title; and thereupon we shall be told, What! will you allow an infamous Libel to be printed and dispersed, only because it does not bear the Title of a Play? Thus, my Lords, from the Precedent now before us, we shall be induced, may we can find no Reason for refusing, to lay the Press under a general Licence, and then we may bid adieu to the Liberties of *Great Britain*.

But suppose, my Lords, 'it were necessary to make a new Law for restraining the Licentiousness of the Stage, which I am very far from granting, yet I shall never be for establishing such a Power as is proposed by this Bill. If Poets and Players are to be restrained, let them be restrained as other Subjects are, by the known Laws of their Country: If they offend, let them be tried, as every *Englishman* ought to be, by God and their Country. Do not let us subject them to the Arbitrary Will and Pleasure of any one Man. A Power lodged in the Hands of one single Man, to judge and determine, without any Limitation, without any Controul or Appeal, is a sort of Power unknown to our Laws, inconsistent with our Constitution. It is a Higher, a more Absolute Power than we trust even to the King himself; and, therefore, I must think, we ought not to vest any such Power in his Majesty's Lord Chamberlain. When I say this, I assure, I do not mean to give the least, the most distant Offence to the noble Duke who now fills the Post of Lord Chamberlain: His natural Candour and love of Justice, would not, I know, permit him to exercise any Power but with the

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we sure his Successors in that high Office would always be Persons of such distinguished Merit, even the Power to be established by this Bill could give me no further Alarm, than lest it should be made a Precedent for introducing other new Powers of the same Nature. This, indeed, is an Alarm which cannot be avoided, which cannot be prevented by any Hope, by any Consideration: It is an Alarm which, I think, every Man must take, who has a due Regard to the Constitution and Liberties of his Country.

I shall admit, my Lords, that the Stage ought not, upon any Occasion, to meddle with Politics, and for this very Reason, among the rest, I am against the Bill now before us. This Bill will be so far from preventing the Stage's meddling with Politics, that, I fear, it will be the Occasion of its meddling with nothing else; but then it will be a political Stage *ex Parte*. It will be made subservient to the Politics and the Schemes of the Court only. The Licentiousness of the Stage will be encouraged instead of being restrained; but, like Court Journalists, it will be licentious only against the Patrons of Liberty, and the Protectors of the People. Whatever Man, whatever Party opposes the Court in any of their most destructive Schemes, will, upon the Stage, be represented in the most ridiculous Light the Hirelings of a Court can contrive. True Patriotism, and love of public Good, will be represented as Madness, or as a Cloak for Envy, Disappointment, and Malice; whilst the most flagitious Crimes, the most extravagant Vices and Follies, if they are fashionable at Court, will be disguised and dressed up in the Habit of the most amiable Virtues. This has formerly been the Case:—In King Charles II's Days, the Playhouse was under a Licence. What was the Consequence? —The Playhouse retailed nothing but the Politics, the Vices, and the Follies of the Court: Not to expose them; no—but to recommend them; though it must be granted their Politics were often as bad as their Vices, and much more pernicious than their other Follies. 'Tis true, the Court had, at that Time, a great deal of Wit, it was then, indeed, full of Men of true Wit and great Humour; but it was the more dangerous; for the Courtiers did then, as thorough-paced Courtiers always will do, they sacrificed their Honour, by making their Wit and their Humour subservient to the Court only; and what made it still more dangerous, no Man could appear upon the Stage against them. We know that *Dryden*, the Poet-Laureat of that Reign, always represents the Cavaliers as honest, brave, merry Fellows, and fine Gentlemen: Indeed his fine Gentleman, as  
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he generally draws him, is an atheistical, lewd, abandoned Fellow, which was at that Time, it seems, the fashionable Character at Court. On the other Hand, he always represents the Dissenters as hypocritical, dissembling Rogues, or stupid, senseless Boobies.——When the Court had a Mind to fall out with the *Dutch*, he wrote his *Ambona*, in which he represents the *Dutch* as a Pack of avaritious, cruel, ungrateful Rascals:——And when the Exclusion-Bill was moved in Parliament, he wrote his *Duke of Guise*, in which those who were for preserving and securing the Religion of their Country, were exposed under the Character of the *Duke of Guise* and his Party, who leagued together for excluding *Henry IV. of France* from the Throne, on Account of his Religion.——The City of *London* too was made to feel the partial and mercenary Licentiousness of the Stage at that Time; for the Citizens having at that Time, as well as now, a great deal of Property, they had a mind to preserve that Property, and therefore they opposed some of the Arbitrary Measures which were then begun, but pursued more openly in the following Reign; for which Reason they were then always represented upon the Stage, as a Parcel of designing Knaves; dissembling Hypocrites, griping Usurers,——and Cuckolds into the Bargain.

My Lords, the proper Business of the Stage, and that for which only it is useful, is to expose those Vices and Follies, which the Laws cannot lay hold of, and to recommend those Beauties and Virtues, which Ministers and Courtiers seldom either imitate or reward; but by laying it under a Licence, and under an arbitrary Court-Licence too, you will, in my Opinion, entirely pervert its Use; for though I have the greatest Esteem for that noble Duke in whose Hands this Power is at present designed to fall, though I have an entire Confidence in his Judgment and Impartiality; yet I may suppose that a leaning towards the Fashions of a Court is sometimes hard to be avoided.——It may be very difficult to make one who is every Day at Court believe that to be a Vice or Folly, which he sees daily practised by those he loves and esteems.——By Custom even Deformity itself becomes familiar, and at last agreeable.——To such a Person, let his natural Impartiality be never so great, that may appear to be a Libel against the Court, which is only a most just and a most necessary Satire upon the fashionable Vices and Follies of the Court.——Courtiers, my Lords, are too polite to reprove one another; the only Place where they can meet with any just Reproof, is a free, though not a licentious Stage; and as every sort of Vice and Folly, generally in all Countries, begins at

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Court, and from thence spreads through the Country, by laying the Stage under an arbitrary Court-Licence, instead of leaving it what it is, and always ought to be, a gentle Scourge for the Vices of great Men and Courtiers, you will make it a Canal for propagating and conveying their Vices and Follies through the whole Kingdom.

From hence, my Lords, I think, it must appear, that the Bill now before us cannot so properly be called a Bill for restraining Licentiousness, as it may be called a Bill for restraining the Liberty of the Stage, and for restraining it too in that Branch which in all Countries has been the most useful; therefore I must look upon the Bill as a most dangerous Encroachment upon Liberty in general. Nay farther, my Lords, it is not only an Encroachment upon Liberty, but it is likewise an Encroachment on Property. Wit, my Lords, is a sort of Property: It is the Property of those that have it, and too often the only Property they have to depend on. It is, indeed, but a precarious Dependence. Thank God! We — my Lords, have a Dependence of another kind; we have a much less precarious Support, and therefore cannot feel the Inconveniencies of the Bill now before us; but it is our Duty to encourage and protect Wit, whosoever's Property it may be. Those Gentlemen who have any such Property, are all, I hope, our Friends: Do not let us subject them to any unnecessary or arbitrary Restraint. I must own, I cannot easily agree to the laying of any Tax upon Wit; but by this Bill it is to be heavily taxed, — it is to be excised; for if this Bill passes, it cannot be retailed in a proper Way without a Permit; and the Lord Chamberlain is to have the Honour of being chief Gauger, Supervisor, Commissioner, Judge and Jury: But what is still more hard, though the poor Author, the Proprietor I should say, cannot perhaps dine till he has found out and agreed with a Purchaser; yet before he can propose to seek for a Purchaser, he must patiently submit to have his Goods rummaged at this new Excise-Office, where they may be detained for fourteen Days, and even then he may find them returned as prohibited Goods, by which his chief and best Market will be for ever shut against him; and that without any Cause, without the least Shadow of Reason, either from the Laws of his Country, or the Laws of the Stage.

These Hardships, this Hazard, which every Gentleman will be exposed to who writes any thing for the Stage, must certainly prevent every Man of a generous and free Spirit from attempting any thing in that Way; and as the Stage has always been the proper Channel for Wit and Humour, therefore, my Lords, when I speak against this Bill, I must think

think I plead the Cause of Wit, I plead the Cause of Honour, I plead the Cause of the *British* Stage, and of every Gentleman of Taste in the Kingdom. But it is not, my Lords, for the Sake of Wit only; even for the Sake of his Majesty's Lord Chamberlain, I must be against this Bill. The noble Duke who has now the Honour to execute that Office, has, I am sure, as little an Inclination to disoblige as any Man; but if this Bill passes, he must disoblige, he may disoblige some of his most intimate Friends. It is impossible to write a Play, but some of the Characters, or some of the Satire, may be interpreted so as to point at some Person or another, perhaps at some Person in an eminent Station: When it comes to be acted, the People will make the Application, and the Person against whom the Application is made, will think himself injured, and will, at least privately, resent it: At present this Resentment can be directed only against the Author; but when an Author's Play appears with my Lord Chamberlain's Passport, every such Resentment will be turned from the Author, and pointed directly against the Lord Chamberlain, who by his Stamp made the Piece current. What an unthankful Office are we therefore by this Bill to put upon his Majesty's Lord Chamberlain! an Office which can no way contribute to his Honour or Profit, and yet such a one as must necessarily gain him a great deal of Ill-will, and create him a Number of Enemies.

The last Reason I shall trouble your Lordships with for my being against the Bill, is that, in my Opinion, it will in no way answer the End proposed: I mean the End openly proposed, and, I am sure, the only End which your Lordships propose: To prevent the Acting of a Play, which has any Tendency to Blasphemy, Immorality, Sedition, or private Scandal, can signify nothing, unless you can likewise prevent its being printed and published. On the contrary, if you prevent its being acted, and admit of its being printed and published, you will propagate the Mischief: Your Prohibition will prove a Bellows, which will blow up the Fire you intend to extinguish. This Bill can, therefore, be of no Use for preventing either the public or the private Injury intended by such a Play; and consequently can be of no manner of use, unless it be designed as a Precedent, as a leading Step towards another for subjecting the Press likewise to a License. For such a wicked Purpose it may, indeed, be of great Use; and in that Light, it may most properly be called a Step towards arbitrary Power.

Let us consider, my Lords, that arbitrary Power has seldom or never been introduced into any Country at once. It must

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must be introduced by slow Degrees, and as it were Step by Step, lest the People should perceive its Approach. The Barriers and Fences of the People's Liberty must be pluck'd up one by one, and some plausible Pretences must be found for removing or hood-winking, one after another, those Senteries who are posted by the Constitution of free Country, for warning the People of their Danger. When these preparatory Steps are once made, the People may then, indeed, with Regret see Slavery and arbitrary Power making long Strides over their Land, but it will then be too late to think of preventing or avoiding the impending Ruin. The Stage, my Lords, and the Prefs are two of our Out-senteries; if we remove them, if we hood-wink them, — if we throw them in Fetters, the Enemy may surprize us. Therefore I must look upon the Bill now before us as a Step, and a most necessary Step too, for introducing arbitrary Power into this Kingdom: It is a Step so necessary, that if ever any future ambitious King, or guilty Minister, should form to himself so wicked a Design, he will have Reason to thank us, for having done so much of the Work to his Hand; but such Thanks, or Thanks from such a Man, I am convinced, every one of your Lordships would blush to receive, — and scorn to deserve.

The Business of this Session being over, his Majesty came to the House of Peers on *Tuesday* the 21st of *June*, and after giving the Royal Assent to the public and private Bills then ready, he put an End to the Session with a Speech; which see in *Chand. Hist. Anno 10. Geo. II. 1737. Pag. 545.*

During the Recess, the following most remarkable Epistolary Correspondence, &c. was made public by Authority.

*The PRINCE to the QUEEN at Richmond, by Lord North.*

*Kew, July 5, 1737.*

MADAM,

**D**OCTOR *Hollings* and Mrs. *Cannon* have just told me, that there is no longer any Doubt of the Princess's being with Child. As soon as I had their Authority, I would not fail to acquaint your Majesty therewith, and to beg you to inform the King of it

*Kew le 5 Jeill. 1737.*

MADAME,

**L**E DOCTEUR *Hollings*, et Mrs. *Cannon* viennent de me dire, qu'il n'y a plus à douter de la grossesse de la Princesse. D'abord que j'ai eu leur autorité, je n'ai pas voulu manquer d'en faire part à votre Majesté, et de la supplier d'en informer le Roi en

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\* Midwife to her Royal Highness, and by the Learned esteemed every way the most accomplished in her Profession, as yet known in *England*.

at the same Time. I am, with même tems. Je suis avec Anno 10. Geo. II.  
all possible Respect, tout le respect possible, 1737.

Madam,  
Your Majesty's most humble,  
and most obedient Son and  
Servant,

FREDERICK.

Madame,  
de Votre Majesté le très-  
humble et très-obeïssant  
fils et serviteur,

FREDERICK.

August 1, 1727. Lord Harrington and Sir Robert Walpole arriving at St. James's soon after the Delivery of the Princess, his Royal Highness was pleased to send for them to his Bed-side about 5 a-Clock in the Morning: When, among other Things, He said he did not know whether the Princess was come before her Time or not; that she had felt great Pains the Monday before, which being apprehended might prove her Labour (of which Opinion Lady Archibald Hamilton and Mrs. Payne declared themselves to be,) he brought her from Hampton-Court to St. James's; but the Physicians were then of another Opinion, and the Pains ceasing and going off, they returned to Hampton-Court again.

That on the Friday following, the Princess's Pains returning, the Prince carried her again to St. James's, when the Physicians, Doctor Hollings and Doctor Broxbolme, and Mrs. Cannon were of Opinion it might prove her Labour, but those Pains likewise going off, they returned again to Hampton-Court on Saturday: That he should not have been at Hampton-Court on Sunday, but it being the public Day, he feared it might be liable to some Constructions; that the Princess growing ill again on Sunday, he brought her away immediately, that she might be where proper Help and Assistance could be had.

The Prince of Wales had likewise that Morning made Declarations to the same Effect, with some other Particulars, to the Queen and the two Princesses who were with her.

*Message from the KING at Hampton-Court, to the PRINCE at St. James's, by Lord Essex.*

*August the 3d, 1737.*

THE King has commanded me to acquaint your Royal Highness, That his Majesty most heartily rejoices at the safe Delivery of the Princess; but that your carrying away her Royal Highness from Hampton-Court, the then Residence of the King, the Queen, and the Royal Family, under the Pains and certain Indication of immediate Labour, to the imminent Danger both of the Prince and her Child, and after sufficient Warnings for a Week before, to have made the necessary

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cessary Preparations for this happy Event ; without acquainting his Majesty, or the Queen with the Circumstances the Princess was in, or giving them the least Notice of your Departure ; is looked upon by the King to be such a deliberate Indignity offered to himself, and to the Queen, that he has commanded me to acquaint your Royal Highness, that he resents it to the highest Degree.

*From the PRINCE at St. James's, to the KING at Hampton-Court, by Lord Jersey, Aug. 3. 1737.*

S I R,

**I**T is with all the Mortification imaginable, that I see by the Message my Lord *Essex* has brought me, that my coming to Town with the Princess has had the Misfortune to displease your Majesty. Permit me, Sir, to represent to you, that in the pressing Situation I was in on *Sunday*, without a Midwife or any Assistance, it was impossible for me to delay one Moment ; otherwise I should not have failed to have come myself to acquaint your Majesty with it. Besides which, the greatest Expedition in the World could never have brought Mrs. *Cannon* in less than two or three Hours after the Birth of the Child. As the Princess had had the Colic for some Days, Mrs. *Cannon*, Dr. *Hollings*, and Dr. *Broxholme*, who were often consulted, all assured me she was not yet so near her Time, of which Opinion these two Physicians still were on *Sunday* at Noon ; but in Case she had Pains different from the Colic, that a Cordial should be given her, and that she should be brought to Town as soon

S I R E,

**C'**Est avec toute la mortification possible, que je vois par le Message, que my Lord *Essex* m'a porté, que ma venue en ville, avec la Princesse, a eu le malheur de déplaire à votre Majesté. Permettez moi, Sire, de vous représenter, que dans le cas pressant, où je me trouvais Dimanche, sans Sage-Femme ni aucune assistance, il m'étoit impossible, de m'arrêter un moment ; sans cela je n'aurois jamais manqué de venir moi-même, en faire part à votre Majesté. Outre que la plus grande expedition du monde n'auroit jamais pu amener Mrs. *Cannons*, que deux ou trois heures après la Naissance de l'Enfant. Comme la Princesse avoit eu la Colique pendant quelques jours, Mrs. *Cannons*, et les Docteurs *Hollings* et *Broxam* furent consultez plusieurs fois, qui m'assurent tous qu'elle n'étoit pas si proche encore de son terme, ce que les deux Medecins étoient d'opinion encore le Dimanche à midi ; mais qu'en cas qu'elle eût des peines différentes de la Colique, on lui dût donner un cordial, et l'a-

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as possible. This Advice I followed in every Point, and am very much concern'd that a Case should happen, in which my Tenderness for the Princess might seem one Moment to remove, what is otherwise first in my Thoughts, the Desire of shewing my Devotion to your Majesty. Besides this, if I may take the Liberty to say so, the Princess desired me so earnestly at that Time to carry her to *London*, where all Assistance was nearer at hand, that I could not resist it : For I could never have forgiven myself, if in consequence of my Refusal, any Accident had happened to her. I hope all this will move your Majesty, and that you will give me Leave to lay myself at your Feet to-morrow at your *Levee*, which I should not have failed to have done last *Monday*, if the Queen had not ordered me to defer it till this Day. The only Thing that has hindered me to-day, is the Fear I have had since I have seen my Lord *Essex*, of displeasing your Majesty in case I should come into your Presence before I took the Liberty to explain to you, with all Submission, the true and only Motive of the Step with which you seem offended. I am with the greatest Respect imaginable, Sir,  
Your Majesty's most humble,  
and most obedient Son,  
Servant and Subject,  
FREDERICK.

mener en ville, aussi-tôt qu'on pourroit. J'ai suivi ceci en tout point, et suis tres-affligé, qu'il est arrivé un cas, où ma tendresse pour la Princesse, pouvoit paroître d'écarter un moment, la premiere pensée que j'ai sans cela toujours, de montrer mon devouement envers vôtre Majesté. D'ailleurs, si j'ose dire, la Princesse m'a le plus instamment désiré dans ce moment de l'amener à Londres, où toute assistance lui étoit plus proche, que je n'y pus résister ; car je n'aurois jamais pû me pardonner, si en consequence de mon refus, aucun malheur lui fut arrivé. J'espere que tout ceci touchera vôtre Majesté, & qu'elle me permettra de me mettre à ses piez demain à son lever ; ce que je n'aurois pas manqué de faire Lundi passé, si la Reine ne m'avoit ordonné de ne le faire, que comme aujourd'hui. La seule chose qui m'en a empêché, est la peur que j'ai eu, depuis que j'ai vû my Lord *Essex*, de déplaire à vôtre Majesté, en me presentant devant elle, avant d'avoir pris la liberté de lui expliquer avec toute soumission, l'unique & veritable motif de la demarche, dont elle m'a parû offensée. Je suis avec tout le respect imaginable,

Sire,

De vôtre Majesté, le tres-humble & tres-obeissant  
fils, serviteur, & sujet,  
FREDERICK.

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Anno 10. Geo. II. *From the PRINCE at St. James's, to the QUEEN at Hampton-Court, by Lord Jersey, Aug. 3. 1737.*

MADAM,

YOU cannot imagine how much the Message my Lord *Essex* brought me has afflicted me. I flattered myself that the Reasons I took the Liberty to give your Majesty, when you had the Goodness to come and see the Princess, would have justified my Departure from *Hampton-Court* to the King. I have taken the Liberty to recapitulate those Reasons in the Letter I have done myself the Honour to write to him upon that Subject, flattering myself, your Majesty will be so good to lend them your Assistance. I am with great Respect,

Madam,

Your most humble and most obedient Son and Servant,  
FREDERICK.

MADAME,

VOUS ne s'auriez croire, comme le Message que my Lord *Essex* m'a apporté m'a affligé. Je me flattois, que les raisons que j'ai pris la liberté de donner à Votre Majesté, quand elle a eu la bonté de venir voir la Princesse, auroit justifié mon depart de *Hamptoncour* auprès du Roi. Je prens la liberté de les recapituler dans ma Lettre, que je me suis donné l'honneur de Lui écrire sur ce sujet, me flattant que Votre Majesté aura la bonté de les apuier. Je suis avec beaucoup de respect,

Madame,

Votre très-humble & très-obéissant fils & serviteur,  
FREDERICK.

*The PRINCE to the KING, August 4, 1737.  
by Lord Carnarvon.*

SIR,

WILL you permit me to lay at your Feet, my Grief for the Refusal I received last Night to make my Court to you to Day? I cannot express how much I suffer from being deprived of that Honour; and seeing myself out of your Majesty's Favour. If any Thing could comfort me in that Misfortune, it would be the Innocence of my Intentions, which I beg your Majesty to believe can never be to offend you. I

SIRE,

ME permettez Vous de mettre ma douleur devant Vos piez, du refus que j'ai eu hier au soir, de vous faire ma Cour aujourd'hui? Je ne saurois exprimer, combien je souffre d'être privé de cet honneur, & de me voir hors des bonnes graces de Votre Majesté. Si quelque chose pouvoit me consoler dans mon malheur, c'est l'innocence de mes intentions, lesquels je supplie Votre Majesté de croire, ne peuyent ja-

do

do not take the Liberty to re-capitulate the Reasons which induced me to leave *Hampton-Court* so suddenly, but I flatter myself your Majesty will more easily grant me that Pardon which I ask, when you reflect on the Condition in which I found myself with the poor Princess, at a Time, when it was not fit for me to delay a Moment. I take the Liberty then most earnestly to conjure your Majesty to restore me to your Favour, and to permit me to make my Court to you to-morrow at your *Levee*, till which Time I cannot be at Ease. I am with all the Respect imaginable,

Sir,

Your Majesty's most humble  
and most obedient Son,  
Servant, and Subject,  
FREDERICK.

mais être de vous offenser. Je ne prens pas la liberté de re-capituler les raisons, qui m'ont induits à quitter *Hamptoncourt* si subitement, mais je me flatte que V<sup>otre</sup> Majesté m'accordera plus facilement le pardon, que je Lui demande; quand elle réfléchira à l'état, où je me trouvai alors avec la pauvre Princesse, dans un temps, qui ne m'étoit pas permis de m'arrêter un moment. J'ose donc conjurer instamment V<sup>otre</sup> Majesté de me rétablir dans Vos bonnes grâces, & de me permettre de Vous faire ma Cour demain à V<sup>otre</sup> levé; jusqu'à quel tems je ne ferois être en repos. Je suis avec tout le respect imaginable,

Sire, De V<sup>otre</sup> Majesté le  
très-humble & très-obeissant  
fils, serviteur & sujet,  
FREDERICK.

*St. James, le 4 Aout, 1737.*

*Message from the KING at Hampton-Court, to the PRINCE at St. James's, by Lord Dunmore, August 20, 1737.*

IT being now near three Weeks since the Princess was brought to Bed, his Majesty hopes there can be no Inconvenience to the Princess, if *Monday* the 29th Instant be appointed for baptizing the Princess his Grand-daughter; and having determined, that his Majesty, the Queen, and the Dutchess Dowager of *Saxe-Gotha* shall be Godfather, and Godmothers, he will send his Lord Chamberlain to represent himself, and the Queen's Lady of the Bed-chamber to represent the Queen, and desires the Princess will order one of the Ladies of her Bed-chamber to stand for the Dutchess-Dowager of *Saxe-Gotha*, and the King will send to the Archbishop of *Canterbury* to attend and perform the Ceremony.

S I R,

**T**HE Princess and I take the Liberty to thank your Majesty most humbly for the Honour you intend to do our Daughter in standing God-father to her ; the Orders my Lord *Dunmore* has brought shall be punctually executed. I should think myself very happy if upon that Occasion I might take the Liberty to come and throw myself at your Feet. Nothing could prevent me but the Prohibition I have received from your Majesty. To be deprived of your Favour is the Thing in the World the most mortifying to me, who not only respect you, but, (if I may make use of that Expression) most tenderly love you. Will you permit me once again humbly to beseech you to pardon a Fault in which at least the Intention had no Share, and to permit me again to make my Court to you at your *Levee* ? I take the Liberty to conjure you to grant this Request as a Thing that will restore my Quiet. I am with all possible Submission,

Sir,

Your Majesty's most humble and most obedient Son, Subject, and Servant,

FREDERICK.

S I R E,

**L**A Princessse & moi prenons la liberté de remercier très-humblement Votre Majesté de l'honneur qu'Elle veut bien faire à notre fille d'en être Parain. Les ordres que my Lord *Dunmore* m'a apporté sur ce sujet, seront executez point par point. Je me conteroïs bien heureux si à cette occasion j'osois venir moi-même, me mettre à vos piez ; rien ne m'en pourroit empêcher que la seule défense de Votre Majesté. D'être privé de Vos bonnes grâces, est la chose du monde la plus affligeante pour moi, qui non seulement Vous respecte, mais, si j'ose me servir de ce terme, Vous aime très-tendrement. Me permettez vous encore une fois de vous supplier très humblement de me pardonner une faute, dans laquelle du moins l'intention n'avoit pas de part, & de me permettre de Vous refaire ma cour à Votre levé ? J'ose Vous en conjurer instamment, comme d'une chose qui me rendra le repos. Je suis avec toute la soumission possible,

Sire, De Votre Majesté le très-humble & très-obéissant fils, sujet, & serviteur,

FREDERICK.

*From*

*From the PRINCE at St. James's, to the QUEEN at Hamp-Annoto. Geo. II.  
ton-Court, by Lord Carnarvon, August 20, 1737.*

1737.

MADAM,

**P**Ermit me to thank you most humbly for the Honour you think fit to do the Princess and me in being Godmother to our Daughter. I have taken the Liberty to return the King my Thanks in Writing, I have added likewise my Grief for the Situation I am in. I beseech you once again, Madam, to assist me with your good Offices, which can never be employ'd for your Son in a more essential Point than in restoring him to his Father's Favour. I am with all possible Respect,

Your most humble and  
most obedient Son and  
Servant,

FREDERICK.

MADAME,

**P**ermettez moi de Vous remercier très-humblement de l'honneur que Vous voulez bien faire à la Princesse & à moi d'être Maraine de notre fille. J'ai pris la liberté d'en faire mes remerciemens au Roi par écrit. J'y ai ajouté mes douleurs, de la situation, où je me trouve. Je Vous supplie encore une fois, Madame, de m'y assister de Vous bons offices, qui ne peuvent jamais être employé dans un cas plus essentiel à Votre fils, qu'à le remettre dans les bonnes grâces de son Pere. Je suis avec tout le respect possible,

Votre très-humble & très-  
obéissant fils & serviteur,

FREDERICK.

*From the PRINCE at St. James's, to the KING at Hampton-  
Court, by Lord North, 30th of August, 1737.*

S I R,

**I**T is with all possible Respect that I take the Liberty to thank your Majesty once more, for the Honour you have thought fit to do the Princess and me in being Godfather to our Daughter. I cannot let this Opportunity pass, without repeating my Petition for that Pardon which I have so often ask'd. I should be glad to find Words that could soften the paternal Heart of your Majesty; if there were any that could stronger mark my Grief and

S I R E,

**C**'EST avec tout le respect possible que j'ose remercier encore une fois Votre Majesté de l'honneur qu'Elle a bien voulu faire à la Princesse et à moi d'être Parrain de notre fille. Je ne saurois laisser passer cette occasion sans reiterer ma demande du Pardon que Je Lui ai demandé si souvent. Je souhaiterois trouver des paroles qui pussent fléchir le coeur Paternel de Votre Majesté; s'il y en avoient qui pussent marquer davantage ma douleur,

my;



Anno 10. Geo. II.

1737.

my Respect. I assure your Majesty I would make use of them. There remains then nothing more for me to say, but to conjure you once again to re-establish me in your Favour; and to assure you, that nothing in the World shall change the tender Respect I owe you; being with great Submission,

Sir,

Your Majesty's most humble and most obedient Son, Subject, and Servant,

et mon respect envers Vous, Je puis assurer très-humblement V<sup>otre</sup> Majesté que je m'en servirois. Il ne me reste donc plus rien à dire, que de Vous conjurer encore une fois de me rétablir dans Vos bonnes Graces, et de Vous assurer que rien au monde ne changera le tendre respect que Je Vous dois, étant avec beaucoup de soumission,

Sire, De V<sup>otre</sup> Majesté le très-humble, et très-obéissant fils, sujet, et serviteur,

St. James's

30. *Aug* 1737.

FREDERICK. FREDERICK.

*From the PRINCE at St. James's, to the QUEEN at Hampton-Court, by Lord North. 30th August, 1737.*

MADAM,

I Think it my Duty to thank you once more most humbly for the Honour you have done the Princess and me in being Godmother to our Daughter, I am extremely mortify'd that the King's Prohibition hinders me from doing it by Word of Mouth; nothing else should stop me. I flatter myself that the Continuation of your good Offices, joyn'd to the Letter I have done myself the Honour to write to the King upon that Subject, will procure me that Permission; and that I shall soon have the Satis-

MADAME,

Je crois être de mon devoir de Vous remercier encore une fois très-humblement, de l'honneur que vous avez fait à la Princesse et à moi d'être Maraine de notre fille. Je suis très-mortifié, que la défense du Roi m'empêche de la faire de bouche. Rien ne m'arrêteroit sans cela. Je me flatte que la continuation de Vos bons Offices, joints à la Lettre que je me suis donné l'honneur d'écrire au Roi sur ce sujet, m'en procureront la permission, et que j'aurai bientôt la satisfaction de reparôître devant Vous.

saction

sation to appear before you  
again. I am with all imagi-  
nable Respect,

Madam,

Your most humble and most  
obedient Son and Ser-  
vant,

FREDERICK.

Je suis avec tout le respect Annote. Geo. II.  
imaginable, 1737.

Madame, Votre tres-  
humble et très-obéissant  
fils et serviteur,

St. James's le

30 Jours 1737.

FREDERICK.

*Message from the KING at Hampton-Court, to the PRINCE  
at St. James's, by the Duke of Grafton, Duke of Rich-  
mond, and Lord Pembroke, Saturday, Sept. 10, 1737.*

GEORGE R.

THE Professions you have lately made in your Letters,  
of your particular Regard to me, are so contradicto-  
ry to all your Actions, that I cannot suffer myself to be im-  
posed upon by them. You know very well you did not give  
the least Intimation to me, or to the Queen, that the Princess  
was with Child or Breeding, until within less than a Month  
of the Birth of the young Princess: You removed the Prin-  
cess twice in the Week immediately preceding the Day of  
her Delivery, from the Place of my Residence, in Expecta-  
tion, as you have voluntarily declared, of her Labour; and  
both Times upon your Return, you industriously conceal'd  
from the Knowledge of me, and the Queen, every Circum-  
stance relating to this important Affair: And you at last,  
without giving any Notice to me, or to the Queen, precipi-  
tately hurried the Princess from *Hampton-Court* in a Condi-  
tion not to be named. After having thus, in Execution of  
your own determin'd Measures, expos'd both the Princess  
and her Child, to the greatest Perils, you now plead Sur-  
prise, and Tendernefs for the Princess, as the only Motives  
that occasioned these repeated Indignities offer'd to me and  
to the Queen your Mother.

This extravagant and undutiful Behaviour, in so essential  
a Point as the Birth of an Heir to my Crown, is such an E-  
vidence of your premeditated Defiance of me, and such a  
Contempt of my Authority, and of the natural Right be-  
longing to your Parents, as cannot be excus'd by the pre-  
tended Innocence of your Intentions, nor palliated or dis-  
guis'd by specious Words only.

But the whole Tenour of your Conduct for a considerable  
Time has been so entirely void of all real Duty to me, that  
I have long had Reason to be highly offended with you.

And, until you withdraw your Regard and Confidence  
from those by whose Instigation and Advice you are directed  
and

**Ann. Geo. II.** and encouraged in your unwarrantable Behaviour to me and to the Queen, and until you return to your Duty, you shall not reside in my Palace; which I will not suffer to be made the Resort of them, who under the Appearance of an Attachment to you, foment the Division which you have made in my Family, and thereby weaken the common Interest of the Whole.

1737.

In this Situation I will receive no Reply: But when your Actions manifest a just Sense of your Duty and Submission, *That* may induce me to pardon, what at present I most justly resent.

In the mean Time, it is my Pleasure that you leave *St. James's* with all your Family, when it can be done without Prejudice or Inconvenience to the Princess. I shall for the present leave to the Princess the Care of my Grand-daughter, until a proper Time calls upon me to consider of her Education.

Sign'd

G. R.

*Lord Baltimore to Lord Grantham, London, Sept. 13, 1737.*

*My Lord,*

I Have in my Hands a Letter from his Royal Highness to the Queen, which I am commanded to give or transmit to your Lordship; and as I am afraid it might be improper for me to wait on you at *Hampton-Court*, I must beg you will be so good as to let me know how, and in what Manner I may deliver, or send it to you. If I may presume to judge of my royal Master's Sentiments, he does not conceive himself precluded by the King's Message from taking this, the only Means, of endeavouring, as far as he is able, to remove his Majesty's Displeasure,

I am, Your Lordship's very humble Servant,

*Baltimore.*

*Lord Grantham to Lord Baltimore, September 15, 1737.*

*My Lord,*

I Have laid your Lordship's Letter before the Queen, who has commanded me to return your Lordship the following Answer.

The Queen is very sorry, that the Prince's Behaviour has given the King such just Cause of Offence: But thinks herself restrained by the King's last Message to the Prince, from receiving any Application from the Prince upon that Subject.

I am, my Lord, Your Lordship's, &c.

*Grantham.*

*The*

*The PRINCESS from Kew, to the KING at Hampton-Court. Anno 11. Geo II.  
Sent by Sir William Irby to Lord Pembroke, and by Lord  
Pembroke delivered to the KING, September 15, 1737.*

1737.

S I R,

**I**T is with all possible Respect that I take the Liberty to thank your Majesty most humbly for the Honour you were pleased to do me in being Godfather to my Daughter. I should not have fail'd to come myself and pay my Duty to you at *Hampton-Court*, to thank you by Word of Mouth; but as I have at present the Misfortune to be debarr'd that Honour, I hope your Majesty will not be displeased that I take the Liberty of doing it in Writing. It is a great Aggravation of my Sorrow, upon this Occasion, to find, that by the Prince's Tenderneſs for me, I am the innocent Cause of his Disgrace; and I flatter myself, if I had Leave to throw myself at your Majesty's Feet, I could have explained the Prince's Conduct in a Manner that would have softened your Majesty's Réſentment. How much am I to be pity'd, Sir, that an Incident ſo grateful to me, and at the ſame Time ſo agreeable to the Public, ſhould unfortunately become the unhappy Cause of a Division in the Family! I ſhall trouble your Majesty no farther than to aſſure you, that as it is to you I owe all my Happineſs, ſo to you, I flatter myself, I ſhall likewiſe ſoon owe the Quiet of my

1737.

S I R E,

**C'**Eſt avec tout le reſpect poſſible que je prens la liberté de remercier très-humblement Vôtre Maieſté de l'honneur qu'elle a bien voulu me faire d'être Parain de ma Fille. Je n'aurois pas manqué de venir moi-même Vous rendre mes devoirs à *Hampton-Court* pour vous en remercier de bouche, mais comme j'ai le malheur d'être privée de cet honneur à preſent, j'eſpere que Vôtre Maieſté ne trouvera pas mauvais que je prenne la liberté de le faire par écrit. Ma Douleur eſt d'autant plus grande, que par la Tendreſſe du Prince je me trouve la Cauſe innocente de ſa Diſgrace; et je me flatte, que ſi j'avois eu la permiſſion de me mettre aux pieds de Vôtre Maieſté, j'aurois pu expliquer la Demarche du Prince d'une manière à adoucir le reſſentiment de Vôtre Maieſté. Que je ſuis à plaindre, Sire, quand une circonſtance ſi flattante pour moy, et en même tems ſi agreeable au publique, eſt malheureuſement devenue le triſte ſujet d'une Division dans la Famille! Je n'importunerai pas davantage Vôtre Maieſté que pour Vous aſſurer, que, comme je vous dois tout mon Bonheur, je me flatte que je vous devrai auſſi bientôt le Repos de ma vie. Je ſuis a-

Life.

G g

Anno 11. Geo. II. Life. I am with all the Re-  
1737. spect imaginable,

Sir,

Your Majesty's most hum-  
ble, and most obedient  
Daughter, Subject,  
and Servant,

AUGUSTA.

vec tout le respect imagina-  
ble,

Sire,

De Votre Majesté la très-  
humble et très-obeissan-  
te Fille, Sujette, et  
Servante,

AUGUSTE.

*From the KING at Hampton-Court to the PRINCESS at Kew,  
September 18, 1737. Sent by Lord Pembroke to Sir Wil-  
liam Irby, for the PRINCESS.*

**I** Am sorry, Madam, that  
any thing should happen  
to give you the least Uneasi-  
ness. It is a Misfortune to  
you, but not owing to me,  
that you are involved in the  
Consequences of your Hus-  
band's inexcusable Conduct:  
I pity you, to see you first  
exposed to the utmost Dan-  
ger, in the Execution of his  
Designs, and then made the  
Plea for a Series of repeated  
Indignities offered to me. I  
wish some Insinuations in your  
Letter had been omitted,  
which however I do not im-  
pute to you, as I am convin-  
ced it is not from you they  
proceed.

G. R.

**J**E suis fâché, Madame,  
qu'il soit arrivé aucune  
chose à vous donner la moin-  
dre Inquietude. C'est un mal-  
heur pour Vous, mais qui ne  
vient pas de moy, que vous  
etes impliquée dans les Con-  
séquences de la Conduite in-  
excusable de votre Mari. Je  
vous plains d'avoir été pre-  
mierement exposée au plus  
grand danger, en execution  
de ses Desseins, et puis d'a-  
voir servie de pretexte pour  
un suite d'Indignités reiterées  
qui m'ont été faites. Je sou-  
haiterois que quelques Insi-  
nuations dans votre Lettre  
eussent été omises, lesquelles  
cependant Je ne vous impute  
pas, étant convaincu qu'elles  
ne viennent pas de vous.

G. R.

*From the PRINCESS at Kew, to the QUEEN at Hampton-  
Court. Sept. 17, 1737.*

MADAM,

**I** Take the Liberty most  
humbly to thank your  
Majesty for the Honour you  
did me in coming twice to  
see me, and also for having  
been pleased to be Godmo-

2

MADAME,

**J**E prens la Liberté de re-  
mercier très-humblement  
votre Majesté de l'Honneur  
qu' elle m'a fait deux fois de  
me venir voir, & aussi d'avoir  
bien voulu être Maraine de  
ther

ther to my Daughter. I am extremely mortify'd that I could not do it in Person, as I certainly should have done, if the King's Orders had not put it out of my Power. I am extremely concern'd at the Manner in which the Conduct of the Prince has been represented to your Majesties, and especially in the Article relating to our two Journeys from *Hampton-Court* to *London* the Week before I was brought to bed. I can venture to assure your Majesty, that the Physicians and the Midwife were then of Opinion, that I should not lie-in before the Month of *September*, and that the Pain I complain'd of was only the Colic; and indeed, *Madam*, is it credible, that if I had gone twice to *London* with the Design and Expectation of being brought to Bed, I should have returned to *Hampton Court*? I flatter myself, that Time and your Majesty's good Offices will procure a happy Change to the present Situation of Affairs, which must affect me so much more sensibly, as I look upon myself to be the innocent Cause of it. I am with all imaginable Respect,

Madam,

Your most humble and  
most obedient Daughter  
and Servant,

AUGUSTA.

ma fille. Je suis très-mortifiée de ne pouvoir le faire en Personne, comme j'aurois certainement fait, si par les Ordres du Roy il ne m'eût été défendu. Je suis très-affligée de la maniere dont la conduite du Prince a été représentée à vos Majestez, & sur tout dans l'article de deux Voies que nous fîmes de *Hampton-Court* à *London* la semaine avant mes Couches. J'ose assurer votre Majesté, que les Medecins & la Sage-Femme furent alors de l'opinion, que je n'accoucherois pas avant le mois de *Septembre*, & que le mal dont je me plaignois étoit seulement la Colique; & en effet, *Madame*, est-il croiable que si j'étois allée deux fois à *London*, dans le dessein & l'attente d'accoucher, je serois retournée à *Hampton-Court*? Je me flatte que le tems, & les bons Offices de votre Majesté, apporтерont un heureux changement à une situation d'affaires, d'autant plus douloureuse pour moi, que j'en suis la cause innocente. Je suis avec tout le Respect imaginable,

Madame,

Votre très-humble, &  
très-obeissante Fille &  
Servante,

*Kew, le 17  
Sept. 1737.*

AUGUSTE.

1737.

G g z

From

Ann. 11. Geo. II.  
1737-8.

Anno II. Geo. II. *From the QUEEN at Hampton-Court, to the PRINCESS at Kew. Sept. 20, 1737.*

1737-8.

**I** Am very glad, my dear Princess, to hear you are perfectly recovered of your Lying-in; you may assure yourself, as you have never offended either the King or me, I shall never fail to give you every Mark of my Regard and Affection. I think it would be unbecoming either of us to enter into a Discussion of the unhappy Division between the King and my Son; and when you are truly informed of the several Declarations that have been made relating to your Journeys from *Hampton-Court*, by whom, and to whom, they were made, you will be convinced, that the Conduct of your Husband has no way been misrepresented.

I hope Time and due Consideration will bring my Son to a just Sense of his Duty to his Father; which will be the only Means of procuring that happy Change, which you cannot more sincerely wish than I do.

CAROLINE.

**J**E suis ravie, ma chere Princesse, de vous sçavoir parfaitement remise après vos Couches. Vous pouvez être assure, comme vous n'avez jamais offensée ny le Roy ny moy, je ne manqueray jamais de vous donner des Marques de mon Egard & de mon Affection. Je crois qu'il nous seroit mal-seânt à toutes les deux, que j'entraissé en discussion avec vous sur les malheureux Differends entre le Roy & mon Fils. Quand vous serez informée au juste, des différentes Declarations qui ont été faites au sujet de vos Voyages de *Hampton-Court*, & par qui, & à qui, vous serez convaincue, que la Conduite de votre Mary n'a été nullement mise dans un faux jour. J'espere que le tems & une meure Consideration porteront mon Fils à des justes sentimens de son devoir envers son Pere. C'est la le seul moyen de procurer cet heureux changement, lequel vous ne sauriez souhaiter plus sincerement que je le fais.

CAROLINE.

**T**HE fourth Session of the second Parliament of K. *George II.* was opened *Jan. 24*, with a gracious Speech to both Houses as usual, which see in *Chandler's Hist. Anno r. i. Georg. II. 1737-8. Page 1.* Which being immediately taken into Consideration in the House of Lords, their Lordships voted, and next Day presented to his Majesty the following Address, in return to his most gracious Speech from the Throne, *viz.*

*Most*

*Most gracious Sovereign,*

Anno 11. Geo. II.

1737-8

**W**E your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, beg leave to return your Majesty our unfeigned Thanks for your most gracious Speech from the Throne.

Lords Address  
with his Ma-  
jesty's Answer.

It is with the greatest Humility we take this first Opportunity of approaching your Royal Person, to lament the irreparable Loss, sustained by your Majesty and these Kingdoms, in the Death of that excellent Princess, our late most gracious \* Queen ; and with Hearts overwhelmed with Grief, to condole with your Majesty, on this melancholy and solemn Occasion.

To indulge ourselves in reflecting upon the many great and amiable Qualities, which distinguished her shining Character, and conspired to form the greatest Queen, the most endearing Consort, and the best Parent, that ever made a Prince, a People, and a Royal Family happy, would only serve to aggravate your Majesty's just Grief, and make those Wounds bleed afresh, which it is our Interest, and shall be our endeavour, to heal. For if the Remembrance of the Blessings we enjoyed, from the happy Effects of her never-to-be-forgotten Virtues, adds so much to the general Affliction, how deep a Sense must it strike into the Breast of your Majesty, the immediate and daily Witness of her inestimable Accomplishments!

At the same time that we presume to lay these imperfect Expressions of our real Sorrow at your Royal Feet, we cannot but bless God for the Preservation of your Majesty's most precious Life, on which the Welfare and Happiness of these Kingdoms do in so great a Measure depend ; humbly beseeching your Majesty, under this severe Misfortune, so to moderate your Grief, as not to endanger a Health of such infinite Importance to all your People, and to exert that princely Fortitude of Mind, which alone can revive our disconsolate Spirits ; and, by lessening your Majesty's Grief, alleviate that of your faithful Subjects.

Your Majesty's gracious Declaration, that the Affairs of the Public shall suffer no Delay or Interruption from you, on any Account whatsoever, is a fresh Instance of your Majesty's making the Welfare of your People your first Care in all Circumstances, and under all Trials ; and must be the strongest Inducement to us, if any were wanting, to lay aside all Heats and Animosities. As your Majesty has always founded the Glory of your Reign, in preserving the religious and civil Rights of your People, and steadily pur-  
suing

\* Who dy'd November 20, 1737.



Anno 11. Geo. II. suing their Prosperity and Happiness; so we, in return, place our great Security under God, for those invaluable Blessings, in the Safety of your Majesty's most sacred Person and Government, which we will always support to the utmost of our Power, excited by all the Ties of Duty and Gratitude, to persevere with unalterable Zeal and Affection in our Loyalty to your Majesty, and an unshaken Regard to the Honour and Dignity of your Crown.

His Majesty's most gracious Answer.

My Lords,

I Thank you for this dutiful Address, and for your Zeal for my Person and Government. The affectionate Manner in which you express the just Sense you have of my great Loss, gives me the most acceptable Proof of your real Concern for me and my Family.

Debate upon the  
Army.

The House of † Commons having, early in the Session as usual, brought in and passed the Mutiny-Bill, and sent it to the House of Lords, that Bill came to be read a second time by their Lordships, on *Thursday* the ninth of *March*, and was committed for the *Tuesday* following without any Debate; but as soon as it was ordered to be committed, the Lord *Carteret* stood up, and spoke in Substance as follows.

My Lords,

Lord *Carteret*.

When any Question happens in this House, which depends upon Facts or Circumstances, we are not to judge from common Reports or Surmises: In all such Cases we ought to be determined by nothing but Parliamentary Knowledge; which Knowledge must be communicated to us as a House of Parliament, and by some proper Authority. The Question now before us, is a Question of this Nature. It is a Question which must depend upon Facts or Circumstances; for, I hope, no Man will, as yet, dare to say, that a Standing Army of 18,000 Men, is a part of our Constitution; and, that the keeping up of such a Number ought always to be agreed to by this House, without our asking for, or being able to assign a Reason for so doing. By the established Maxims of this Kingdom, by what ought to be an established Maxim in every free Country, a numerous Standing Army is never to be kept up, nor ought this House ever to agree to the keeping up of such a one, without some Necessity for our being obliged to submit to such a dangerous Expedient; and as that Necessity can proceed from

† See their Debate upon the Army, in *Gland. Hist. An. 11. Geo. II. 1737-8. p. 10. to 85.*

from nothing but our Circumstances, either Abroad or at Home, before we agree to the keeping up of such an Army, an Account of those Circumstances ought to be communicated to us in a Parliamentary Way.

Ann. 11. Geo. II.  
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The Nation, my Lords, may sometimes be in danger of being attacked by a foreign Enemy, or our Government may be in danger of being overturned by a powerful and seditious Faction at Home; and sometimes we may be so unfortunate as to be exposed to both these Dangers at once. When any of these happens to be our Case, we are to give our Consent to the keeping up of a Body of regular Troops; and, their Number ought always to be in Proportion to the Power of that foreign Enemy, or domestic Faction, from which we have, at that time, reason to apprehend Mischief. But, in all such Cases, we are not to allow our Apprehensions to take their Rise from public *Gazettes* and hackney News-Papers, or from the private Informations that may be whispered by one Lord to another. We have a Right to be fully informed of the Circumstances which the Nation may then happen to be in, and till that Information is laid before us in a proper Way, we ought not to load the People with the Expence, or expose our Liberties to the Danger of keeping up a numerous Standing Army.

Upon this Occasion, my Lords, I have done my Duty, I have done what every Member of this House ought to do, I have carefully perused his Majesty's Speech from the Throne, at the Beginning of this Session; and, upon that perusal, I had the Pleasure to see, that it did not contain so much as the least Intimation of Danger. I believe it is one of the shortest and most general, that ever came from the Throne; and, as I have great Confidence in his Majesty's Wisdom, Penetration, and Foresight, I must from thence conclude, we are at present in such a happy Situation, as not to be under the least Apprehension of being disturbed, either by foreign or domestic Enemies. I have gone farther, my Lords, I have carefully examined our Journals for this Session, and upon that Examination, I had the Satisfaction to find, that there is no Message, nor any Answer from the Crown, which can give us the least Ground to believe we are now in any Danger. As these, my Lords, are the only Methods I can think of, by which a Parliamentary Knowledge of our being in dangerous Circumstances can be communicated to us, I must think it inconsistent with the Dignity of this House to presume, from any Information we may have had from public News-Papers or private Whispers, that we are in such Circumstances; and without such a Presumption, no Member of this House can

agree

Ann. II. Geo. II. agree to the keeping up of a Standing Army of 18,000 Men, unless he thinks, that such an Army ought to be kept up, even when the Nation is in the greatest Tranquillity and Security; which is a Way of thinking no Member of this House, nor any *British* Subject, will ever, I hope, fall into; for if this should ever come to be established as a Maxim, a Standing Army of 18,000 Men at least would become a Part of our Constitution.

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But now suppose, my Lords, that we were, upon the present Question, to determine ourselves from common Reports and Surmises, or from public *Gazettes* and hackney News-Papers, yet even from them, I think, we must conclude, that we can never be in a State of more absolute Security than we are at present. Let us examine the present State and seeming Inclinations of all the Powers of *Europe*, and we must presume, that the Tranquillity, either of this Nation or of *Europe*, is not in the least Danger of being disturbed for some Years to come. Our Neighbours the *French*, my Lords, seem of late to have entirely changed their Conduct. Their ambitious View of being able to give Laws to *Europe*, may still be the same; but, they have of late endeavoured to aspire to it, by very different Methods from what they formerly made use of. Instead of warlike Measures, and violent and rapid Conquests, they are following the Arts of Peace: They are easing their People of Taxes, encouraging Trade and Commerce, setting up and improving their Manufactures, establishing and extending their Colonies and Plantations, both in the *East* and *West-Indies*, and cultivating a Spirit of Industry and Frugality in every part of their Dominions. This is a Method more slow, but, in my Opinion, more certain, than that they formerly pursued. It is a Method so certain, that I am convinced, they will soon arrive at the End they have in view, unless their Neighbours, and particularly we of this Nation, take care to follow the same Measures. They are now so careful not to raise the Jealousy of their Neighbours, that in the last War they were engaged in against the Emperor, though they were every where Victorious and Successful, though there seemed to be nothing to obstruct the Progress of their Arms, yet of themselves they set Bounds to their Ambition, and were satisfied with adding but one Province to their Dominions, lest by aiming at more, they had awakened the other Powers of *Europe*, who then seemed to be all asleep: I say asleep, my Lords; for though that Province was but inconsiderable, when compared with the Conquests they might have made, if none of the other Powers of *Europe* had joined the Emperor against them; yet, as the *French* Dominions

Dominions were before too large, as their Power was before that Conquest greater than is consistent with the Balance of Power in *Europe*, it was a Conquest they would not have aimed at, if those who ought to be the Guardians of that Balance, had been as watchful as they ought to have been, and had taken proper Measures for preventing an Addition to that Power, which, before that Acquisition, was more than a Match for any one of its Neighbours upon the Continent.

Ann. 11. Geo. II.  
1737-8.

These Measures, my Lords, the *French* have been led into by a Minister, who, by his Wisdom and Conduct, has united with the Dignity and Authority of his Character, the Affections and Esteem of the People; and what is most extraordinary, he has gained the Affections and Esteem of the People, by pursuing Measures which were contrary to their Genius and Inclinations, and contrary to those Notions of Glory and Renown, which had been inculcated into them, during the late and long Reign of *Lewis* the 14th. He has never threatened War, while he was cringingly suing for Peace; nor has he put his Country to the Expence of formidable Armaments, at a Time when he was resolved to tie up their Hands by peaceable Instructions. On the contrary, when he found himself under a Necessity of going to War, he began the Attack, before his Enemies had a Suspicion of the Danger; and he put an end to the War, as soon as he could obtain a sufficient Compensation for his own Country, and a proper Satisfaction for those who were its Allies. From the whole of his Conduct it appears, that he is not ambitious of making great Conquests, nor desirous of going to War; therefore while he continues prime Minister, we have no Reason to apprehend an Attack or Invasion from *France*; and as it is not our Interest to engage in War, as we never ought to engage in any War but through Necessity or for Self-preservation, I cannot think we have at present a View of attacking the Kingdom of *France*, or any other Kingdom or State in *Europe*.

I know, my Lords, it may be objected, that as the Minister who has now the Direction of public Affairs in *France*, is of a great Age, we can put no trust in that Security which depends upon his Life. It may be said, that by the Course of Nature, his Life, or his Capacity for Business, can be of no long Continuance; and as he may be succeeded by a Minister of an ambitious, enterprizing Spirit, we ought to provide against the worst, and therefore ought to keep up such a standing Army as may be sufficient for repelling any Attack. This, my Lords, is an Objection which will always be as good as it is at present, against our reducing

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Anno 11. Geo. II. any Part of our Army. A young Minister may die as well as an old, and a young Minister is more apt to change his Measures, or to engage in ambitious Designs, than an old one can be supposed to be; therefore, if this be now a good Objection against our making a Reduction, it must always be so; consequently a Standing Army of at least 18,000 Men, must be entailed upon us for ever, and so become a Part of our Constitution. But suppose the present prime Minister of *France* should die, or should resign his Employments, before next Session of Parliament, he has acquir'd so much Glory, and that Kingdom has reaped so great and so apparent Benefits, from the peaceable Measures he has pursued, that his Successor must be not only a Man of an ambitious and enterprising Genius, but also a Man of no great Wisdom, if he does not follow the same Measures; and suppose he should not, suppose him as ambitious, or as great a Fool as any Minister that ever directed the Affairs of that or any other Kingdom, it will require some Time before he can fix himself in Power, and till he has fixed himself, he will not, he dare not attempt to disturb the Repose of any of his Neighbours; so that, with respect to *France*, supposing the worst that can happen, we have no Reason to apprehend an Attack, or any Disturbance from that Quarter, before next Session of Parliament; and in the next Session we may again encrease the Number of our Forces, if the Circumstances of the Nation then seem to require it.

Our Neighbours the *Dutch*, my Lords, can have no Inclination to disturb the present happy Tranquillity of *Europe*; and they seem to be so well assured of its not being in Danger of being disturbed by any other Power, that they have not now such a Number of Forces in their Pay as they ought to keep up for guarding their own Frontiers, and for fulfilling the Stipulations they have entered into with their Neighbours. Then, with regard to the Emperor, he is, we know, already engaged in a War with the *Turks*, and in that War he has, as yet, met with so little Success, that we cannot suppose he will attack any of his Neighbours on this Side, while that War continues; nor can we suppose he would have engaged in that War, if he had not been fully assured of the pacific Disposition of the Court of *France*; and the Event has shewn, that his Assurance was not without good Foundation; for the Court of *France*, instead of taking Advantage of the War the Emperor is engaged in against the *Turks*, are now employing their good Offices for putting an End to that War. This shews the Harmony that at present subsists between the Houses of *Austria* and

and *Bourbon*; and as the Contention between these two Houses has been the chief Cause of most of the Wars that have lately happened in *Europe*, I see no Reason to apprehend that the present Tranquillity can be disturbed, as long as that Harmony subsists.

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The two Northern Powers, my Lords, seem both at present more Intent upon the Improvement of their Trade and Navigation, than upon disturbing the Tranquillity of one another, or of any of their Neighbours; and the *Muscovites*, notwithstanding their late Success against the *Turks*, have their Hands so full upon that Side, that there is not the least Danger of their attacking any of their Neighbours upon this. Here likewise we have a fresh Instance of the pacific Inclinations of the Court of *France*; for though their favorite Point in *Poland* had been defeated, and his most Christian Majesty's own Father-in-law drove out of that Kingdom, by the successful Arms of *Russia*, yet the Court of *France* offered their Mediation for bringing about a Peace between the *Russians* and *Turks*, and the *Russians*, with more than *Russian* Policy, accepted of that Mediation.

The Peace of *Italy*, my Lords, seems to be insured not only by the present Circumstances of the several Princes thereof, but by the Guaranty of the King of *France*; a Guaranty which is sufficient for over-awing the ambitious Views of any Prince or Potentate in *Italy*, and a Guaranty which his most Christian Majesty will, I believe, for his own Honour, as well as for the Interest of his Kingdom, take care to observe more faithfully than some Guaranties have been of late Years observed.

I have now, I think, shewn, my Lords, that with respect to the Tranquillity of this Kingdom in particular, or of *Europe* in general, there is not the least Disturbance to be apprehended from any Prince or Potentate in *Europe*, unless it proceeds from *Spain* or *Portugal*; and that neither of these Kingdoms will attack the other, I think, we are at present as certain of, as we can be of any future Event whatsoever. As *Portugal* is not by itself a Match for *Spain*, there is not the least Danger that the latter will be attacked by the former; and as *Spain* must have been convinced, by the late Conduct both of *France* and of this Nation, that they will not be allowed to execute any ambitious Designs they may have against *Portugal*, there is Reason to presume they have, for some Years at least, laid such Designs entirely aside; therefore, we have no Ground to think, that either of these Kingdoms will attack the other; and this Nation surely can never be in Dread of an Attack,

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much less an Invasion from *Portugal*; for though the *Portuguese* should be so mad as to imagine themselves an equal Match for this Nation, yet the seasonable Assistance we lately sent them, when they were in Danger of being swallowed up by *Spain*, must have laid them under such Obligations, that it cannot be supposed they will attack us for a slight Cause, or in a short Time; and their own Safety will always, in my Opinion, prevent their falling out with us; because they must be sensible, that the Moment they do so, they lose the only Safeguard they can depend on, for preventing their being conquered, and made a Prey of by their inveterate Enemies the *Spaniards*.

The Interest and Inclinations of the *Spanish* Court, with respect to its Neighbours, and with regard to us, remain now, my Lords, only to be considered. With regard to *France*, whatever the Interests of the *Spanish* Nation may be, I am sure it cannot, and I am sorry it cannot be supposed, that the Court of *Spain* have at present an Inclination to have any Misunderstanding with the Court of *France*; but suppose they had, and that a War should break out between these two Nations, I hope it is not to be presumed, that we would take the Part of *France* against *Spain*; and, considering that some Years ago we refused to be the sole Mediator of the Differences then subsisting between the Courts of *Madrid* and *Vienna*, only for Fear of disobliging the Court of *France*, though we might have thereby had an Opportunity of detaching *Spain* entirely from a Dependence upon, or a Confidence in the Court of *France*, I think it is to be presumed, that the same Persons would still entertain the same Fears, and would therefore refuse to join with *Spain* in a War against *France*, however much the Interest of *Europe* in general, however much the Interest of this Nation in particular might plead for such a Conjunction. There is therefore no Reason to apprehend, that *Spain* will disturb the present Tranquillity by attacking *France*, or that we would be engaged in the Quarrel, if it should; and as for *Spain's* attacking the Emperor, or any of the other Princes or States, who have Dominions in *Italy*, we can have no Reason to apprehend any such thing, as long as *France* stands engaged to guaranty those Dominions, and seems resolved to observe and perform that Engagement.

In the last Place, my Lords, let us consider the Interests and Inclinations of the Court of *Spain*, with regard to this Nation in particular. What the Inclinations of the Court of *Spain* may be, I shall not pretend to determine; but I am sure, it is against the Interest of that Nation to have any

any Misunderstanding with this; and therefore till I am informed of the contrary by a proper Authority, I must presume, that the Court of *Spain* have at present no Design against the Peace of this Kingdom. Their *Guarda Costa's* in *America* have, it is true, been guilty of many piratical Practices of late Years, and by such Practices have insulted the Honour, as well as injured the Trade of this Nation; but I cannot think, that any of those Practices were authorized by the Court of *Spain*. We know, that many of these *Guarda Costa's* are Ships fitted out by private Men, who receive Commissions from the *Spanish* Governors in that Part of the World, to guard their Coasts, and to seize all Ships and Vessels they find concerned in illicit Trade. The Crews of such *Guarda Costa's* are usually composed of Fellows who serve, no Purchase no Pay; and when these Fellows can meet with no lawful Prize, Necessity compels them to act like Free-booters: They seize the first Ship they can make themselves Masters of, and then swear they found her carrying on an illicit Trade upon their Coasts. By such Fellows many of our Merchant Ships have been, I believe, unjustly seized; but I am convinced, that, upon our Application, many of these Fellows have been already hung up at the Yard's Arm, and that every one of them will be so served, as soon as he is detected, and the Fact fully proved. Nay, if it should be found, that any of the *Spanish* Governors in the *West-Indies* have winked at such Practices, or have gone Shares in the Spoil, which may be the Case, I am convinced they would, upon our Application, be called home by the Court of *Spain*, and would there meet with an exemplary Punishment.

This, my Lords, I am fully convinced of, because, I find, our Ministers still keep a Correspondence with the Court of *Spain*, and are now carrying on a Negotiation with that Court, in order to concert proper Measures for preventing such Practices in Time to come; for if the Court of *Spain* had in the least appeared to have countenanced such Practices, or if that Court had refused, or unreasonably delayed to inflict condign Punishment upon any one of the Offenders, after the Crime had been fully proved against him, I am sure no Minister of *Great Britain* would have dared to keep a Correspondence, or to carry on any sort of Negotiation, with a Court that had offered such an Indignity to his King, and such an Insult to his Country.

Peace, my Lords, is a desirable Thing for any Nation, especially a trading Nation; but, whoever thinks that a Peace ought to be purchased at the Expence of the Honour of his Country, will, at last, find himself egregiously mistaken.

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Ann<sup>o</sup> 17. Geo II. taken. By the Custom of all Nations, and all Ages, when an apparent, and real Affront has been put upon one Nation by another, the injured Nation ought to make a peremptory Demand of Redress, and if it is not granted upon the very first Demand, they ought to break off all further Correspondence, and immediately begin Hostilities. If they submit to a Negotiation after such a Refusal, they may, at last, obtain a nominal Peace, but it comes attended with Contempt; and a Nation that is contemned, can never expect a Cessation of Hostilities.

For this Reason, my Lords, I cannot entertain so bad an Opinion of those who have, at present, the Honour to be concerned in our Administration, as to imagine, that the Court of *Spain* have in the least countenanced the piratical Practices of some of their Subjects in *America*, or that they have refused to do Justice upon any one of the Offenders: But, suppose they should do so before next Session of Parliament; for, as I have said, it is impossible to suppose they have yet done so; I shall grant, we should in such a Case, be under an immediate Necessity of declaring War against that Nation; but, in such a War, what can we have to do with a Land-Army? What Occasion can we have for keeping up an additional Number of Troops on account of such a War? Every Gentleman must know, that it would be ridiculous in us, to attempt to invade *Old Spain*, with such a Land-Force, as would be sufficient to make any Conquest there; and, tho' we should make a Reduction of 6000, we could spare a sufficient Number of Land-Forces, for infesting and making Inroads upon their Coasts. Can any Gentleman suppose, that *Spain* would attempt to invade this Nation? They know, by Experience, the Precariousness of all such Attempts; and, the formidable Navy, which this very Session of Parliament has enabled his Majesty to fit out, must make it ridiculous in them, to think of any such Attempt. The Number of Seamen, that are already provided for the Service of the ensuing Year, will enable his Majesty to send out several Squadrons of Men of War, every one of which will be superior to any naval Force the *Spaniards* can send against them. With these Squadrons we may protect our Trade and our Dominions, and at the same Time, so much annoy the Coasts of our Enemies, that they will soon be forced to sue for an Accommodation. It is by means of our Navy only, that we can pretend to force *Spain* to a Compliance with our just Demands; and, therefore, if we are in Danger of being involved in a War with that Nation, we ought to reduce our Army, that we may with the more Ease augment our Navy.

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This was the Method, my Lords, by which his late Majesty managed the War he was engaged in against *Spain*.  
 Even after the War was in a manner begun, he made a Reduction of his Land-Forces, and he told his Parliament, he did so, because he thought his Fleet sufficient not only to give a Check to the ambitious Views of *Spain*, but to compel them to agree to reasonable Terms: The Event, accordingly, answered his Expectations; for, by means of his Fleet, he soon convinced the *Spanish* Court, how vain it was for them to contend with this Nation, or to embark in any Projects that were inconsistent with the Interest of *Great Britain*, or with the Engagements we had entered into with any of our Allies. This is an Example, which ought now to be followed; I wish it had been always followed: If we had made the same Use of our Fleet upon several Occasions, since that Time, we should never have had any Depredations to complain of; nor should we now have had the least Ground to be afraid of *Spain*, or of any Power in *Europe*, that durst take her Part against us.

Ann. 1. Geo. II.  
 1737-8.

Having now, my Lords, examined the present Circumstances of the Nation with respect to foreign Affairs, I shall next beg Leave to examine our present domestic Circumstances, so far at least as they can be traced from common Reports and public News-papers. From these I am sure it does not appear that we are in the least Danger of any domestic Troubles or Commotions. There may be great Discontents in the Nation, I am sorry they are so general as they appear to be; but, there is no Disaffection, nor any seeming Design to overturn or disturb the Government. If there are any Plots or Conspiracies in Embryo, if the Government is afraid of any such, something of it ought to be told, some Intimation ought to be made to us of our Danger, and some of the Reasons for such Fears ought to be communicated to us in a parliamentary Way: When this is done, I shall be ready to join in any Measures for disappointing such Conspiracies, and for bringing the Conspirators to condign Punishment; but, I cannot agree to load and terrify the Nation, with such a numerous Standing Army, only because a Minister has whispered me, that he thinks our Government, or our present happy Establishment, in Danger.

I know, my Lords, it may be said, that there have been lately many Mobs and Tumults in several Parts of the Kingdom, and that therefore, the Number of regular Forces we have at present, is the least that is necessary for preventing or dispersing such Tumults, and for assisting and enabling the civil Magistrate to execute the Laws of our Country. My  
 Lords,

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Lords, I hope, I shall never see this Nation reduced to such unfortunate Circumstances. A Law, which the civil Power is unable to execute, must either be in itself oppressive, or it must be such a one as affords a Handle for Oppression. I hope this House will always have Penetration enough, not to pass a Law which is in itself oppressive, or at least the Goodness to repeal it, as soon as it appears to be so ; and I hope we shall always have Virtue and Courage enough to send that Magistrate or that Officer to *Tyburn*, who shall dare to make an oppressive Use of any Law we give our Consent to. Therefore, if there be now any Laws in being, which cannot be executed by the civil Power, we ought to enquire into them, and the Use that is made of them, in order to amend or repeal them ; and to contrive some other Methods or Laws, for answering those Ends, for which they were intended. Surely we are not to make a Sacrifice of our Constitution and Liberties, by establishing a military Government, for the Support of oppressive or dangerous Laws, which, through Inadvertency or want of Foresight, have been agreed to, either by ourselves or our Ancestors.

But suppose, my Lords, that the Mobs and Tumults, which have lately happened, and the Opposition that has in some Cases been made to the civil Magistrate, have proceeded from nothing of an oppressive Nature in any of our Laws, nor from the oppressive Use that has been made of any of them, which, I hope, is the Case ; yet Experience has taught us, that regular Troops are far from being proper or effectual Instruments, for preventing such Tumults, or for aiding the civil Magistrate in the Execution of our Laws. The late atrocious Murder committed by the Mob at *Edinburgh*, was perpetrated within a few hundred Yards of a whole Regiment of regular Troops ; and even here in *Westminster*, nay even within the Verge of the Court, we know that great Affronts have been offered to the Government, and some Murders committed, by Mobs within the View of our regular Troops. It is impossible, my Lords, to make our regular Troops proper or effectual Instruments for quelling Mobs, or for enforcing the Laws of their Country, unless you lodge the civil as well as military Power in the Officers of your Army ; and such a Regulation, I am sure, no Lord of this House would agree to ; nor would any Officer of our Army, I hope, desire to see it established.

For this Reason, my Lords, we ought to take all possible Care, by prudent Regulations and frequent Enquiries, that the civil Magistrate may never stand in need of regular Troops, for enabling him to quell a Mob, or to execute any Law that has been, or shall be enacted. Even with respect

to our Taxes, we ought to take Care to have them so moderate, and levied in such an equal and easy Manner, that regular Troops may never be necessary for enforcing the Payment of them, or for apprehending those that are guilty of defrauding the public Revenue ; for, it is a bad Omen for the Liberties of a People, when they are loaded with Taxes, which they think so heavy, or so ill applied, that the Collectors must always come escorted by Parties of Horse, Foot, or Dragoons. Such a People may be kept in Obedience, and may be compelled to pay as long as they have wherewithal to pay, by a numerous Standing Army ; but from the Moment that such Measures become necessary, the People must be look'd on as Slaves, and their Armies of Soldiers and Tax-Gatherers will look upon themselves as their Masters. This, my Lords, is far from being the Case of this Nation at present. There may be Discontents amongst us, there may be some Persons who grumble unjustly at those Taxes, that have been laid upon them by a free and independent Parliament ; but, I hope, no Man will pretend, that those Discontents are, as yet, so general or so violent, or that those Grumblers are so numerous, that an Army of 18,000 Men is the least that is necessary, for keeping our People in Obedience, and for compelling the Payment of our Taxes ; therefore, the Circumstances the Nation is in at present, with respect to our domestic Affairs, can afford no Argument against our making a Reduction of our Army.

On the other Hand, my Lords, the Arguments in Favour of a Reduction are many, and all of them, in my Opinion, unanswerable. I shall mention only two, one of which proceeds from our present Circumstances, with respect to foreign Affairs, and the other from our present Circumstances, with regard to domestic Affairs. Our Neighbours upon the Continent are all now, and have been for several Years, cultivating the Arts of Peace. They are all setting up Manufactures of their own, and encouraging Trade and Commerce among their Subjects, with great Industry and Application. This must of course diminish our Trade, or oblige our Manufacturers and Tradesmen, to sell the Produce of their Labour at a cheaper Rate than they formerly used to do ; for, as the Extensiveness of our Trade consists in furnishing our Neighbours with those Manufactures, which they cannot work up among themselves, if they begin to set up Manufactures of the same Kind, we can no longer propose to furnish them with such Manufactures, unless we can make them better, and sell them cheaper, than our Neighbours can have them at home. For this Reason, we have now much greater Reason to be afraid of the Progress of

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Anno 11. Geo. II. 1737-8. Trade among our Neighbours, than we have to be afraid of the Progress of any of their Arms. The Progress of their Arms we may give a Check to, as soon as it becomes formidable, by violent Methods, which are quick and easy, because the Execution depends upon our Government only ; but, we cannot pretend to give a Check to the Progress of their Trade, by violent Methods, as long as they do nothing that is inconsistent with the Treaties they have made with us. We can give a Check to their Trade by no other Method, but that of enabling our Merchants to sell cheaper, than our Neighbours are able sell Commodities of the same Kind and Goodness : For this Purpose, we must enable our Manufacturers and Tradesmen to sell the Produce of their Labour at the cheapest Rate ; and, the only Way to enable our Manufacturers and Tradesmen, to sell the Produce of their Labour at a cheaper Rate, is, to abolish all those Taxes which enhance the Price of the Necessaries or Conveniencies of Life, or of any of those Materials that are necessary, for working up our Manufactures. This, my Lords, we have too long neglected, and to this Neglect we may chiefly ascribe the present Attempts of all our Neighbours, and the flourishing State of the Manufactures and Commerce of that Neighbour, who is our most dangerous Rival. Every Man who is conversant in Trade knows, what great Encroachments *France* has made, since the Peace of *Utrecht*, upon every Branch of the Trade of this Kingdom. As we were then in Possession of the principal Trade and Manufactures of *Europe*, if we had then begun to diminish our Taxes, and to take proper Measures for the Preservation and Improvement of our Trade, they could not have made such Encroachments upon us, and consequently they could not have been in their present flourishing State, nor should we have been in the distressed Condition we are in at present.

The only Method, my Lords, we can take, for diminishing our Taxes, is to be frugal in our public Expences ; and, considering the powerful Navy we keep in continual Repair, and the great Number of Seamen with which our Trade, while it lasts, will always be able to furnish us, there is no Article of public Expence, in which we can be frugal with more Safety and Conveniency, than in that of our Standing Army ; therefore, we ought to neglect no Opportunity for reducing our Army, nor ought we ever to keep up a greater Number than is absolutely necessary, according to the Circumstances the Nation happens to be in at the Time. But so far have we been from being frugal and saving upon this Article, or, indeed, any other Article of public Expence, that we have for many Years kept up a more numerous

numerous Standing Army than was, in my Opinion, necessary ; and upon most of the other Articles we are every Year increasing, instead of diminishing. Our civil List Revenue has been increased from 4 or 500,000 *l.* to, I may say, near a Million a Year. The Expence of our Army at Home has been of late Years increased : The Expence of our Land-Forces in the Plantations, *Minorca*, and *Gibraltar*, has been increasing for several Years, and is this Year higher than it was the last : The Expence of *Chelsea* Hospital is every Year increasing ; and as we are almost every Year creating some new Post, or adding some new Officer to the Management and Collection of our public Revenue, this, I believe, is a hidden and dangerous sort of Expence, which has been vastly increased of late Years, and is every Year increasing. Many Smalls, my Lords, make a Great, as we may see by comparing our present annual Revenue with what it was forty or fifty Years ago. Before the Revolution, the whole of the public Expence, which the People of this Nation were annually loaded with, was but about two Millions : Now, what we call the current Expence, which the Parliament provides for every Year, amounts to above two Millions, besides the civil List, the Interest growing due every Year to our public Creditors, and the sinking Fund, which are provided for by established, perpetual Revenues ; and as the civil List Revenue may be computed at near one Million, the Interest growing due upon our public Funds at near two Millions, and the sinking Fund, at above one Million yearly, we must reckon that the People of this Nation are now, even in Time of Peace, loaded with a public Expence of six Millions, instead of the two Millions, which was the highest Sum they were ever loaded with in Time of Peace, before the late happy Revolution.

This leads me, my Lords, to the other Argument in Favour of a Reduction of our Army, which, I have said proceeds from the present State of our domestic Affairs. If we consider the many and the heavy Taxes our People are now obliged to pay : If we consider the great Number of Years they have been loaded with these Taxes : If we consider the frequent Hopes that have been given them, of seeing some of these Taxes abolished, the many Disappointments they have met with, and the Despair they are now reduced to, of ever seeing themselves freed from any of these heavy Taxes ; we cannot wonder at the general Discontent which now prevails, even though no late Measure, nor any late Misfortune, had contributed to add to that Discontent. Our People, my Lords, must be relieved from some of the heavy Taxes they now groan under : His Majesty, in his first

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Speech from the Throne, was so gracious as to declare, that this was what he ardently wished. This revived the Hopes of our People; but they have been so long disappointed, that they now begin to lose Patience. A Reduction of our Army will enable us to answer the People's Expectations, or at least it will revive their Hopes. This will give immediate Satisfaction, and will remove that general Discontent which now prevails. It will revive the Spirit and the Industry of our People, and may recover our Trade from the languishing Condition in which it is at present. But God only knows the Effects which a contrary Measure may produce: No Man can tell what the People may be drove to by Repentment and Despair; therefore, every Man who wishes well to our happy Constitution, or to the illustrious Family now upon our Throne, must be for a Measure that so apparently tends towards reconciling to his Majesty the Hearts and Affections of his People.

I hope, I need not mention, my Lords, the many other Disadvantages that attend keeping up a numerous Standing Army in a free and trading Country; every one of which affords an unanswerable Argument for making a Reduction. The keeping up of a standing, mercenary Army in a free Country, necessarily destroys the martial Spirit and Discipline of the rest of the People; and all Histories shew, that a cowardly People must soon become Slaves to a foreign or a domestic Army. The keeping up of such an Army, in a trading Country, encourages and promotes a Spirit of Idleness, Lewdness, Debauchery, Luxury, and Extravagance among all Ranks and Degrees of Men; and every one knows that the Trade of a Country, especially where it has many Riyls, can be supported by nothing but by the Industry, Virtue, Sobriety, and Frugality of the People. The Quartering of Soldiers, even in this Country, is a terrible Grievance, and a heavy Load upon many private Men, and is of most dangerous Consequence to the Freedom of our Elections, because it is a Rod in the Hands of our Ministers, which they may make use of for correcting any Corporation or County, that shall chuse a Member whose Face is not agreeable to the Court. The providing of a daily Support for so many hale, lusty Fellows, most of whom have been bred up to some laborious Trade or Employment, greatly diminishes our Profits by Trade, and consequently our national Revenue, which, every one knows, depends upon the Labour and Industry of our poor. These are Disadvantages which are universally acknowledged; and therefore, we ought never to submit to the keeping up of a standing, mercenary Army, but in Cases of the most urgent Necessity; nor ought we

we at any time to keep up a more numerous mercenary Army, *Amo 11. Geo. II.*  
 than the present Necessity evidently requires. 1737-8.

I shall conclude, my Lords, with observing, that when a Parliament is called upon any extraordinary Business, or when any Affair of an extraordinary Nature is to be laid before them, it has always been the Custom for our King, to take Notice of it, or to give some Intimation of it, in his Speech from the Throne, at the Opening of the Session. This is a Custom immemorial, and a valuable Custom, because it prevents Surprize. His Majesty, in his Speech from the Throne, at the Opening of this Session, was so far from intimating to us, that any Affair of an extraordinary Nature was to be laid before us; or that any extraordinary Demand was to be made upon us; that he expressly told us, he called us together for the necessary Dispatch of the public Business. From hence I had the Pleasure to conclude, that nothing was to come before us, but the usual and ordinary Business, that must necessarily be dispatched by us every Session of Parliament; and will any Man pretend, that the keeping up and providing for an Army of 18,000 Men, is any Part of that public Business, which must necessarily be dispatched by every future Session of Parliament in *Great Britain*? My Lords, if there were no other Reason for making a Reduction, this alone would make me sanguine in its Favour; lest it should, from our Conduct in this Session, be presumed, that the keeping up and providing for such an Army is an Affair of course, an Affair which every subsequent Session ought to agree to, without the least Intimation, or the least Reason for shewing, that it is necessary for them to do so. I must therefore conclude with moving your Lordships, that it may be an Instruction to the Committee, That the Number of effective Men for *Moves for a Reduction.*  
*Guernsey and Jersey*, to be kept up for next Year, shall not exceed, 12,000.

Duke of Newcastle.

My Lords,

Duke of Newcastle.

I have so great an Opinion of the noble Lord who spoke last, that I am always extremely sorry when I differ from him upon any Question that happens to come before us. In such Cases it is even with Difficulty I yield to my own Opinion, and with great Diffidence I presume to give my Reasons. As that noble Lord always expresses himself in the most forcible Manner, as he always places every Argument he makes use of in the strongest Light, perhaps what I am to say upon the present Subject, may, at first View, seem to deserve but little Regard. If this happens to be the Case, I hope you will not impute it to the Weakness of the Argument, but to the Incapacity



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Incapacity of him that makes use of it ; for, however coldly or obscurely I may express myself, I am persuaded, that when Gentlemen consider seriously the Argument itself, without Regard to the Dress it has been put in, they will have Reason to think, that I am swayed in my Opinion by nothing but a sincere, and, I hope, a just Regard for the Honour of my King, and the Safety of my native Country.

I shall agree with the noble Lord, that in all Cases which depend upon Facts or Circumstances, every Lord, who has the Honour to be a Member of this House, is to judge from his own Knowledge ; but, my Lords, I cannot agree with him in this, that in all such Cases, we are to determine ourselves by nothing but that Knowledge, which has been communicated to us as a House of Parliament, and by a proper Authority. In the Case now before us, the Nation may be in Danger, yea, it may be in imminent Danger ; some treasonable Plot for an Insurrection may be in Embryo, some dangerous Design for an Invasion may be upon the Anvil, our Government may even have had some dark Hints of the Danger ; and yet it may not be proper for the Crown to communicate its Fears, or the Hints that have been given, in a public manner, to Parliament. On the contrary, I believe it is better, generally speaking, to provide against the Designs of our Enemies, without alarming the People with an Account of the Danger they are in, or apprizing our Enemies that we are acquainted with their Machinations. In all Cases, therefore, that depend upon Facts or Circumstances, we are to consider, whether those Facts or Circumstances are of such a Nature, that the Crown may safely communicate them in a public Manner to Parliament ; and if they be such as cannot, in all Probability, be safely communicated, we must determine ourselves by common Reports and Surmises, and according to the Credit which we think those Reports and Surmises deserve. Even the Whispers of a Minister may be of Weight in such a Question, and must be of Weight in Proportion to the Opinion the Listener has formed of the Whisperer.

The noble Lord, my Lords, has with great Judgment examined the present Circumstances of *Europe*, and of this Nation ; and has endeavoured to shew, I wish I could say, has actually shewn, that we are in no Danger from our Circumstances, either abroad or at home : But, before I answer particularly what he has said upon either of these Heads, I must observe, that he has not attempted to give us one Reason, why we should think the Tranquillity of *Europe*, or of this Nation, in greater Security this Session, than we thought it was last Session ; and yet, I think, it is absolutely necessary, to give some very strong Reasons of this Kind, otherwise, every

Member,

Member, who was last Session for the Number of regular Anno 11. Geo. II.  
 Forces then proposed to be kept up, must be for the same 1737-8.  
 Number this Session. I very well remember, I am sure several  
 Lords now present may remember, that the same Number,  
 now proposed, was last Year agreed to without Opposition, at  
 least without any Debate ; and, therefore, I am surprized to  
 hear any Lord who was then present, now stand up to oppose  
 the keeping up of such a Number for this ensuing Year, with-  
 out shewing some Reason, for believing that our Tranquillity,  
 both at home and abroad, is now fixed upon a more solid and  
 lasting Foundation than it was last Session of Parliament.

I must confess, my Lords, it gave me some Pleasure, to  
 hear from one who is so good a Judge, that we are not, at  
 present, in the least Danger of having our Tranquillity dis-  
 turbed either abroad or at home. Whoever thinks so, must  
 highly applaud the prudent Measures his Majesty has taken  
 for restoring and establishing the Tranquillity of *Europe*, and  
 for preserving the Tranquillity of these Kingdoms. But, al-  
 though I have as good an Opinion of the Measures his Majes-  
 ty has all along pursued, though I am convinced he has done  
 every Thing for attaining so good an End, that human Wis-  
 dom could direct, yet, I have the Misfortune to think our  
 Security is far from being certain and infallible. There are  
 so many Changes may happen at the several Courts of *Europe*,  
 that nothing but Omniscience can foresee them ; there are so  
 many Schemes may be formed, for disturbing the present  
 Tranquillity, that nothing but an omnipotent Power, can,  
 with Authority, say, none of them shall take Effect. As it  
 is against the Interest of this Nation, to make any Conquests  
 upon the Continent of *Europe*, as it is against our Interest, to  
 allow any of the Princes of *Europe* to subdue any one of his  
 Neighbours, it is therefore our Business, to preserve the  
 Peace of *Europe*, and to set Bounds to the ambitious Views  
 of the several Princes thereof. This, we have of late Years  
 effectually done, by keeping our Navy always in good Re-  
 pair, and by keeping up a Land-Army sufficient for protect-  
 ing our own Dominions, and fulfilling our Engagements with  
 our Allies. It is to this, that the present Tranquillity is  
 chiefly to be ascribed ; but, if we remove the Cause, the  
 Effect must cease ; If we should reduce our Army, we should  
 be no longer in Condition to give an immediate Check to the  
 ambitious Views of any Prince in *Europe*, which might in-  
 duce some one or other of them, to give a loose to his Ambi-  
 tion, in hopes of being able to conquer some neighbouring  
 Territory, before we could send it a proper Relief.

In this Light, my Lords, we ought to consider the several  
 Princes of *Europe*, and if we consider them in this Light,  
 we

Anto 11. Geo. II.  
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we may find Reason to suspect, that however pacific their Inclinations may at present appear, they would not long continue so, if we should put it out of our Power to give an immediate Check to their ambitious Designs. The Court of *France* seem, 'tis true, at present, to have nothing but peaceable Views : I hope, they have really none other ; but this is what no Member of this House can answer for. There are some Territories in their Neighbourhood, and not far distant from this Island, which it would certainly be very much their Interest to annex to their Crown : We have Reason therefore to suspect, that they will take hold of the first favourable Opportunity for doing so ; and now that the Emperor is engaged in a heavy War against the *Turks*, is there any Thing could furnish them with a more favourable Opportunity, than that of putting it out of our Power to send an immediate Assistance to the Emperor ? The Behaviour of the Court of *France* for many Years, their Behaviour at the Beginning of the last War, may convince us, that we ought not to put great Confidence in the present serene Aspect of Affairs at that Court. Nay, the noble Lord himself has furnished us with an unanswerable Argument, for not allowing the present seeming Inclinations of the Court of *France*, to have an Influence upon any of our Measures : In giving the Character of the prime Minister at that Court, he told us, that when that Minister found himself under a Necessity of going to War, he began the Attack, before his Enemies had a Suspicion of the Danger. Are we not from thence to suppose, that he would behave in the same manner, if we, by a Reduction of our Army, should furnish him with a favourable Opportunity, for making a very considerable Addition to his Master's Dominions ?

The best way, my Lords, to prevent an Attack is, to be always in a Condition to repel it. The Court of *France* seem, at present, to have no Inclination to attack us, or any of our Allies ; but, if we should put it out of our Power to repel their Attack, it might produce an Alteration in their Inclinations : They might, they probably would, form a Design against some of our Allies ; and as they must expect, that we would, as soon as possible, fly to the Assistance of our Allies, they would probably begin with making an Invasion upon this Kingdom, in order to kindle up a civil War amongst us, which would of course prevent, for some time, our being able to give any Assistance to our Allies.

I am glad, my Lords, to find the noble Lord has now so good an Opinion of that Minister, who presides in the Councils of *France*. I always thought him a wise, an upright, and peaceable Minister. But it is not many Years since, I have heard

heard a very different Character given of him in this House, I have heard him, even in this House, represented as a cunning, dangerous and designing Minister, and if I am not mistaken, that noble Lord himself, then joined in that Opinion. This, I am no way surprized at; for all Ministers are liable to have their Characters and their Measures misrepresented: At the same time, when that Minister was here represented as a dangerous, designing Minister, he was in *France* accused, especially by the military Gentlemen, of having sacrificed the Interest and the Glory of *France* to his own Ease and Security; but, he has had the good Fortune to out-live, as well as overcome all the Obloquies, which Malice and Envy have been able to throw upon his Conduct. As that Minister has great Wisdom, he must have peaceable Inclinations, both which became manifest, by his putting an End to the last War, when he seemed able to push it with Advantage; for, we all know, that to the Love of Peace he sacrificed, not only the Affair which *France* had at first principally in view, but he likewise sacrificed some of the Views of each of his Allies; and, if we consider it right, the Acquisition he made to the *French* Dominions was no very great Acquisition: He acquired only a Right to that Province, which the *French* have by Violence possessed for many Years past; so that, though he has added to their Rights, he cannot be said to have added to the Possessions, and consequently, not to the Power, of the Kingdom of *France*.

But, my Lords, I must observe that, whatever Sacrifices he then made, whatever Bounds he set to the Ambition of *France*, those Sacrifices, and that Moderation, must be imputed rather to his Wisdom than his Love of Peace. He knew the Preparations we had made, he knew the Measures his Majesty was taking, for putting a Stop to the Arms of *France* and its Allies, in case they had offered to push their Conquests, farther than was consistent with the Preservation of the Balance of Power in *Europe*. He well remembered the Danger and Distress that were brought upon *France*, by the Alliance which the Ambition of *Lewis* XIV. had occasioned to be formed against him, and therefore, by his Moderation, he wisely prevented its being necessary to form such another Alliance. This was apparently the true Cause of his Moderation at that Time; and this Cause will subsist, and will produce the same Effect, as long as we follow the same Measures.

But if we, by a Reduction of our Army, should put it out of our Power to follow such Measures, that very Wisdom which then prevailed with him to use Moderation, would in such a Case, prevail with him to lay hold of the Opportunity with which our Folly had furnished him, for adding to the

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Dominions and Power of his native Country. Nay, suppose him as great a Lover of Peace, and as little swayed by Ambition, as the noble Lord has represented, and so honest and upright as not to take Advantage of the most favourable Opportunity for doing Injustice, yet if we should furnish him with such an Opportunity, it would hardly be possible for him to withstand the prevailing Spirit of his Country; and if, by the great Authority he has acquired, he should be able to withstand it, our Security would depend entirely upon his Life; for we cannot suppose a new Minister could, or would, withstand it: On the contrary, he would, in my Opinion, most probably comply with it, in order to establish himself in Power, by gaining Popularity, and by adding to the Glory and Dominions of his Country.

From hence, my Lords, I think it must appear, that if the Tranquillity of *Europe*, or the Tranquillity of this Nation, be in any Security at present, that Security proceeds from, and must depend upon, our keeping up the same Number of Forces we have now on foot. If we do this, I believe we are in no Danger of any present Disturbance; but if we do otherwise, if by a Reduction we render ourselves unable to assist our Allies, according to the Engagements we have entered into with them, it may produce such a Change in the Face of Affairs abroad, as may give us Reason to repent heartily of what we have done. This would afford a just and a real Cause of Complaint. The Enemies of our Government would then have no occasion to invent Lies and Calumnies for misrepresenting and defaming our Administration. They might then justly accuse them of having betrayed our Allies, and sacrificed our own Security, by an ill-timed and imprudent Piece of Frugality; and I make no doubt but they would make as much use of this Handle as possible, for raising Discontents in the Nation, and for alienating the Minds of the People from his Majesty and his Government.

Whatever Measures the *Dutch* may follow, or whatever Opinion they may have of the Sincerity of our Neighbours, can be no Rule for us, my Lords. If we should make a Reduction, and that Reduction should be followed by an Attack upon us, or some of our Allies, it would be a poor Excuse for us to say, we trusted to the Sincerity of our Neighbours, because we found the *Dutch* did so. However, I must take Notice, that the *Dutch* have of late made no Reduction, and as they are more in Debt in Proportion than we are, I must be of Opinion, that if they thought themselves so very secure, they would have made a Reduction before this Time. As for the Emperor, we cannot say it was the Confidence he put in the pacific Disposition of the Court of *France*, that  
made

made him engage in the present War against the *Turks* ; Anno 11. Geo II.  
for by his Treaty with *Muscovy* he was obliged to engage in  
that War, and that Treaty was made when he could put  
no Confidence in the pacific Disposition of the Court of  
*France* : at least if he did, he has since found himself mis-  
taken ; for since the making of that Treaty he was attack-  
ed, and has been dispossessed of some Part of his Dominions,  
by *France* and her Allies.

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'Tis true, my Lords, while the Emperor continues engag-  
ed in the present War against the *Turks*, there is no danger  
of his attacking any of his Neighbours on this Side ; but  
there is nothing like an equal Security, that, during the  
Continuance of that War, he will not be attacked by some  
of the Powers on this Side, especially if we should disable  
ourselves from giving him any Assistance. If he meets with  
good Success in his War with the *Turks*, it may excite the  
Jealousy of some of his Neighbours on this Side ; and if he  
meets with bad Success, it may revive their Hopes of being  
able to make some Conquests they have long aimed at ; so  
that in either Case, there is, I think, a greater Probability  
that he will, than that he will not, be attacked on this  
Side ; and if he should, we must engage in his Favour, in  
order to preserve ourselves by preserving the Balance of  
Power in *Europe*. The *French* have indeed, offered their  
Mediation for putting an End to that War, and their Medi-  
ation has been accepted by the Emperor, nay, it has been  
accepted even by the *Muscovites*, notwithstanding the Ani-  
mosity which then seemed to subsist between the two Na-  
tions ; but this Mediation has as yet produced no Effect, and  
when it does, it is then time enough to conclude from  
thence, that there is a thorough Harmony subsisting between  
the Courts of *France* and *Vienna*.

With respect to *Muscovy*, I shall grant, there is no like-  
lihood of their attacking any of their Neighbours in *Europe*,  
while they are engaged in a War with the *Turks* ; but that  
War may soon come to an End, and if they end it suc-  
cessfully, it may inspire them with thoughts of extending  
their Dominions on this Side ; for we may remember, it is  
not a great many Years since we were obliged to send a  
Fleet to protect *Sweden* against them, and it would be our  
Interest to send Land-Forces as well as a Fleet, rather than  
to see that Kingdom conquered by *Muscovy*. Then, with  
regard to the two Northern Powers, I shall agree with the  
noble Lord, that they seem more intent upon improving  
their Commerce by the Arts of Peace, than upon extending  
their Dominions by the Art of War ; but this Spirit may  
soon take a different Turn ; and I must observe, that not

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much above twenty Years ago, we were threatened with an Invasion from *Sweden*: If the warlike and resolute Prince who was then upon their Throne, had landed in any Part of this Island, with a Body of veteran Troops under his Command, tho' his Attempt might not have had the Success he expected, yet it would have put this Nation to a much greater Charge than it can be put to, by keeping up an additional Number of 5 or 6000 regular Forces for one Year, or even for twenty Years. And with regard to *Italy*, my Lords, tho' the Peace of that Country is now secured by the Guaranty of the Crown of *France*, yet that Security is, I am afraid, upon an uncertain and precarious Foundation; for if the present Chief Minister of *France* should die or resign, the new Ministry in that Kingdom might fall in with the views of *Spain*, and in that Case, I believe, that instead of guarantying the Emperor's Dominions in *Italy*, they would join with *Spain* in endeavouring to drive him entirely out of that Country.

I come now, my Lords, to consider the Circumstances of this Nation, with regard to *Spain* and *Portugal*. As to the latter, I believe, we have not the least Occasion to fear an Attack from thence, or that we shall be drove into a War, for preventing any of their ambitious Designs; but, I cannot say so much of the former. On the contrary, I think, the Peace between them and us is, at present, in a ticklish sort of State; and, I do not know, how soon a War may be kindled up in *Europe*, by their ambitious Projects against *Portugal* or *Italy*. It is but very lately since we were obliged to send a Squadron to the *Tages*, for preventing the Execution of their Projects against *Portugal*; and if that Dispute had come to an open Breach, 'tis more than probable, we should have been obliged to send Land-Forces thither, as well as a Fleet of Men of War. Upon this last Occasion, 'tis true, our Fleet put an End to their ambitious Project; but we are far from being certain, that *Spain* will always put a Stop to her Designs against *Portugal*, upon the first Appearance of our Fleet; for as *Portugal* lies open to them by Land, they may not only attack, but conquer that Kingdom, in spite of all we could do by Means of our Fleet only. Therefore, if we have a mind to preserve *Portugal* against the Attempts of *Spain*, and surely it is our Interest to do so, we must always keep ourselves in a Condition to send a Body of Land-Forces, as well as a Squadron of Men of War, to protect that Kingdom, in Case of any sudden Attack from *Spain*.

As for the Interests or Inclinations of the Court of *Spain* with regard to this Nation in particular, I shall readily agree with

with the noble Lord, that it is against the Interest of the *Spanish* Nation to have any Misunderstanding with this ; but, my Lords, from the late Behaviour of the *Spaniards* towards the Subjects of this Nation, we must presume that they are either of a different Opinion, or that they have very little Regard to the Interest of their Native Country ; for it is certain, that the Commanders of their *Guarda Costas* in the *West-Indies*, and even some of their Governors, have done what they could, not only to create a Misunderstanding, but to kindle up a War between the two Nations ; and if some of our own Subjects, who have made themselves a sort of Bonteseus upon that Occasion, had got their Aim, there would have been now no Attempt to reduce our Army ; for we should have been at this time involved in a bloody War with that Nation, very much to the Disadvantage of both, and greatly to the Satisfaction of the Enemies of both.

The Depredations lately committed by the *Spanish Guarda Costas*, and I'm afraid, too much countenanced by some of their Governors, in *America*, I shall join with the noble Lord, my Lords, in calling piratical Practices, because I believe none of them were authorized, or any way countenanced by the Court of *Spain* ; nor has that Court, I believe, as yet refused to order Satisfaction to be made, and the Offenders punished, in any Case where the Fact could be fully proved to be piratical or unlawful, and the Offenders discovered. But as the Resolutions of Courts are not always governed by Justice, Prudence or Reason, we cannot answer for what they may do. The Practices of some of these *Guarda Costas*, and perhaps of some of these Governors, have been such, that we must insist upon Satisfaction ; and if it is refused by the Court of *Spain*, we must seek for that Justice and Reparation in a hostile Manner, which we find we cannot obtain in a peaceable. These are the true Circumstances of this Nation at present with regard to *Spain* ; and in such Circumstances, I must think it would be imprudent in us to do that which must necessarily diminish the Weight of our peaceable, and at least retard the Effect of our warlike Endeavours for obtaining that Satisfaction which we must insist on ; for with respect to our Negotiations, it is certain, that *Spain* will not be so ready to comply with our Demands in a peaceable Way, when they know we cannot put above 4 or 5000 Land-Forces on Board any Fleet we may send to infect their Coasts, as when they know we can immediately put 8 or 10,000 Land-Forces on board such a Fleet ; and if we should be obliged to declare War against that Kingdom, I am sure 4 or 5000 regular

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regular Troops, landed on any Part of their Coasts, could not stay so long, nor do them so much Mischief, as 8 or 10,000 such Troops could do.

Nay, my Lords, if we should agree to the Reduction proposed, I do not think we could spare to send one Regiment, either to infect the Coasts of *Spain*, or to guard our own Plantations in *America*; for, however contemptible an Opinion some Gentlemen may express of the Power of *Spain*, 'tis certain they can send out at any time 5 or 6000 good Troops, to make an Invasion upon us. These Troops may be embarked so privately, and may sail so suddenly, that they may land before we have heard of their Embarkation; and if 5 or 6000 good Troops, with the Pretender, or any of his chief Adherents at their Head, should be safely landed, in any Part of *Britain* or *Ireland*, they would involve us in a Civil War, they might even endanger our present happy Establishment, unless we could, in a few Days, assemble such a Body of regular Troops, near the Place of their Landing, as would be sufficient to attack and defeat them, before they could have an Opportunity of being joined by any considerable Number of the disaffected Part of our own People. This, my Lords, is no imaginary Apprehension: The Troops that were designed against us from *Cadix* in the Year 1718, would have been landed in this Island, before we had heard of their Embarkation, if they had met with a fair Wind, instead of meeting with that Tempest, which dispersed them, and disappointed their Design. The Winds and Waves were then our only Safe-guard; but the Winds and Waves are not under our Command; and therefore, it is a Safe-guard, upon which we ought never to place our only Dependence.

His late Majesty, 'tis true, my Lords, trusted entirely to his Fleet, for putting an End to the War he was engaged in with *Spain*; and, therefore, he reduced his Land-Army; but, the Circumstances we are now in, are extremely different. The *French* were not only our firm Allies, but our Partners in that War, and invaded that Kingdom with an irresistible Land-Army, while we scoured their Coasts with an irresistible Navy. For this Reason, we had then no Occasion to send any Land-Forces against them; but, if we should now be engaged in a War with *Spain*, can we expect such a Partner? Can we expect any such Assistance? I hope, *France* would not declare against us: I have Reason to believe they would not; but, it is to be feared, that the Subjects of *France* would under-hand give the *Spaniards* all the Assistance they could. This, my Lords, is a material Difference;

Difference ; and, I must take notice, that though his late Annor. Geo. II. Majesty had no Occasion to attack *Spain* with a Land-Army, yet, the Reduction he made of his Land-Army, probably, gave Rise to their Design of invading us, and put this Nation to an Expence much superior, to what we saved by the Reduction. 1737-8.

Thus, my Lords, I have endeavoured to follow the noble Lord, in his Remarks upon the several Countries and Potentates of *Europe*, and, I think, I have shewn, that whatever seeming Security the Tranquillity of *Europe* may be in at present, it depends upon a very unsettled Foundation. Nay, I think, I have shewed, that the Tranquillity and Security we now enjoy, is chiefly owing to the Army we have kept up, and that it entirely depends upon our continuing to keep up the same Army. I shall now beg Leave to make some Remarks upon our domestic Circumstances, by way of Answer, to what the noble Lord has been pleased to say upon that Head. With regard to them, my Lords, I shall grant, that we cannot properly say, there is any considerable Disaffection among our People. I believe there are very few amongst us, who are really Enemies to the illustrious Family now upon our Throne, or who have a blind, and I may add, a mad Affection, for any other Family ; but, my Lords, there is such a Spirit of Sedition, such a Spirit of Disobedience to all Government, lately gone forth, that, I am persuaded, if it were not for our Army, we should have not only Mobs and Tumults, but Insurrections and Rebellions in every Corner of our Dominions. How this Spirit has come to prevail so much, or spread so far, I am at a Loss to account for. I am sure, no Man can say, it is owing to any Acts of Oppression or Injustice in our Government ; and, therefore, I am apt to impute it to the many defamatory Libels that are spread daily, weekly, and monthly, through the whole Kingdom, and the unlawful, though not illegal, Liberties they take with Magistrates, whose Characters as well as Persons are made sacred, by the Laws of all Countries but this. When such a Spirit is so universal, it is not to be supposed, but that some ambitious, or necessitous, great and wicked Men, would be forming Plots and Conspiracies against the Peace and Government of their Country, if their Hopes of Success were not prevented by keeping up a Body of regular Forces ; and therefore, though there may be no Plot or Conspiracy at present, it is to be supposed there would soon be one, if we should make a Reduction of our Army ; for, I must observe, upon this Occasion, that we never did reduce our Army much lower than it is at present, but what it occasioned some Plot or Conspiracy

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was occasioned by the small Number of regular Forces we had then on foot ; the designed Invasion from *Spain* in 1718, was occasioned by the Reduction of our Army ; and the Plot, usually called the Bishop of *Rochester's*, in 1721, proceeded from the same Cause ; from whence it appears, that the only way to preserve our domestic Tranquillity, is, to preserve that which is the Cause of it, I mean, the Number of regular Forces we have now on foot.

The Army, 'tis true, Sir, cannot entirely prevent Mobs and Riots, nor can they prevent some little Mischiefs being done, by a sudden and unlook'd-for Tumult ; but the Army will always be able, I hope, to prevent a Mob's forming itself into an Insurrection ; and, there would certainly be a great many more Mobs, and a great deal of more Mischief done by those Mobs, if it were not for our Army. The Mob at *Edinburgh* would, probably, have proceeded to other, and more heinous Outrages, if they had not been over-awed by a Regiment's being in their Neighbourhood ; and here in *Westminster*, and in most other Places of the Kingdom, if it were not for our regular Troops, our Magistrates themselves, perhaps some Persons of the first Rank or Quality, might be made Sacrifices of by the Mob, instead of those low Sacrifices they now sometimes, though rarely, make, of Informers, and inferior Executioners of Justice. Even those little Pieces of popular Justice, or rather of popular Resentment, which have been lately executed by the Mob, are owing to the small Number of regular Troops we have now on foot, and the great Regard those Troops shew to the Laws and Constitutions of their Country ; for, we cannot have a Body of such Troops in every Place where a Mob may happen, nor can those Troops march, or attempt to quell any Mob that does happen, till they are regularly, according to the Instructions they have from his Majesty, required so to do, by a proper civil Magistrate ; so that some Mischief is generally done by the Mob, before the Troops can march up to them, or attempt to disperse them ; and, sometimes the March of the Troops is prevented, which was the Case at *Edinburgh*, by the Ignorance or Neglect of the civil Magistrate, who ought to call them to his Assistance.

As for Taxes, my Lords, I am sure no Government can be supported without Taxes of some Kind or other, and wherever there are Taxes or Duties upon Goods of any Kind, there will be Smuggling : That Smuggling the Government must endeavour to prevent and punish ; and when the Smugglers arm themselves with military Weapons against the civil Power, a military Force of some Kind or other must be

be employed against them. If you were not to employ regular Troops in such Cases, you must employ your Militia; and, I think it much better to employ regular Troops, than to expose the Lives of your Gentlemen, Freeholders, Merchants, or Tradesmen. The Laws relating to our Taxes are, I think, the only Laws that meet with a frequent Opposition in their Execution; and if there is any thing really oppressive in any of these Laws, I shall readily agree to amend or repeal them; or if an oppressive Use has been made of any of them, I shall readily join in an Enquiry into the Abuse, and shall be glad to see the Offenders meet with condign Punishment; but while these Laws subsist, they must be executed; and every one knows, that it often becomes necessary to employ a military Force for that Purpose.

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We have no Taxes, my Lords, but what are necessary for the current Service, and for paying off the Interest and Principal due to the Creditors of the Public; therefore our Taxes can give no Disquiet to any Man, who has a Regard for the Safety and Honour of his Country. Our Debts, or a considerable Part of them, must be paid off, before we can diminish our Taxes. This will in a few Years be the necessary Effect of the Sinking-Fund, if in the mean Time the Nation be put to no extraordinary Expence; for if it should, that Fund must be diverted, or new Taxes laid on the Subject. The only infallible Method therefore, for diminishing our Taxes, is to prevent the Nation's being put to any extraordinary Expence; and as Invasions, Plots and Conspiracies, always bring an extraordinary Expence upon the Nation; and are, as I have shewn, generally the Consequences of making a Reduction in our Army, therefore the only infallible, and most speedy Way for diminishing our Taxes, is to make no Reduction in our Army, unless we were absolutely secure both against Invasions from abroad, and Conspiracies at home. From hence I must conclude, that, if we have a mind to remove, as soon as possible, those Discontents that may now be occasioned by the Number and Weight of our Taxes; if we have a mind to give a speedy Check to the Trade of our Neighbours, by enabling our Manufacturers and Tradesmen to sell the Produce of their Labour at a cheaper Rate than usual; we must be extremely cautious of making a Reduction in our Army.

As for the other Arguments, my Lords, in Favour of a Reduction, which the noble Lord was pleased just to mention, they are all of them Arguments against keeping up any Number of regular Troops; and as they have been fully answered upon former Occasions, I shall not take up

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your Time with repeating those Answers: Only I must observe, that it is a great Mistake to imagine, that as soon as a Man becomes a Soldier, he ceases to be a Tradesman or Labourer: On the contrary, there are many Soldiers who, when they are not upon Duty, work as hard as any Tradesman or Labourer in the Kingdom; and I believe, no Officer will refuse to give a Soldier Leave to be absent, when his Duty does not necessarily require his Presence; nay, they are often allowed to be absent from Duty, if they can procure one of their Companions, not then upon Duty, to do their Duty for them; therefore we must not conclude, that the yearly Profits, or Revenue of the Nation in general, suffers any great Diminution by the Number of regular Troops now kept in Pay.

I shall agree with the noble Lord, that when any Affair of an extraordinary Nature is to be laid before Parliament, it is usual for the King to take some notice of it in his Speech from the Throne, at the Beginning of the Session; but surely, my Lords, the keeping up of the same Number of regular Troops we had last Year, the same we have kept up for several Years, the least Number, I believe, we have kept up ever since his Majesty's Accession, cannot be called an Affair of an extraordinary Nature. There was, therefore, no Occasion for his Majesty to take notice of it, in his Speech from the Throne; or to mention any thing about the Army, unless he had then thought that there would be a Necessity for encreasing it. If there had been any such Design, his Majesty would certainly have mentioned it, and would have told us some of his Reasons for thinking, that an Augmentation would be necessary; and from a Parity of Reason, when any Member thinks a Reduction ought to be made, it is incumbent upon him to shew some late Alteration in the Circumstances of the Nation, for inducing us to believe that such a Reduction may with Safety be made. This, as I took notice at the Beginning, the noble Lord has neglected to do, and this to me is of itself a convincing Proof, that no Reduction ought to be made; because, as he never misses any good Argument that can be made use of in favour of what he proposes, if there had been any Alteration, I am sure he would not have missed setting it in the most clear and conspicuous Light.

*The Earl of Chesterfield.*

My Lords,

*Earl of Chesterfield.*

Although I expected that there would this Day be some Debate upon the Affair now before you, yet I came hither without the least Design of giving you any Trouble upon this

this Occasion ; for the Question now before you has been so often debated, and all the Arguments that can be made use of in its favour, so clearly and distinctly put, upon former Occasions, that it is difficult to say any thing new upon the Subject : But the noble Lord who spoke last, took Occasion from what happened last Year, to make use of an Argument, which, I think, lays an Obligation upon me to declare my Approbation of what is now proposed to you, in the most public Manner: The noble Lord took notice, that the Number of Forces proposed to be kept up for the ensuing Year, was agreed to last Session of Parliament without any Opposition or Debate, and therefore his Lordship concluded, that the same Number ought likewise now to be agreed to without Opposition, unless we could shew, that some material Alterations have happen'd in the Affairs of the Nation since last Year.

My Lords, suppose I am indolent and neglect to oppose, or speak against what I disapprove of in one Session, is that a Reason why I should not oppose it, or speak against it, when it comes before the House in a new Session? My Silence last Year did not proceed from my approving of what was then done, but from a Presumption, which I had formed from repeated Experience, that nothing I could say upon that Subject, would have any weight with the Majority of this House ; and this, I'm afraid, will be the Fate of what I am now to say. However, in order to prevent the same Argument's being made use of next Session, I am resolv'd to say something ; and to satisfy that noble Lord in what he seems so solicitous about, I must acquaint him, that I think our present Circumstances very different from what they were last Session. The Peace between the Emperor and *France* was then but lately concluded ; and as the Affairs of *Europe* had by means of that Peace, taken a very new, and a very extraordinary Turn, it might last Session have been alledged, that we ought to continue our Army, till we should see what Changes that Turn might produce. Though I do not think this would have been a good Argument ; yet, even this Argument is now removed ; because that Turn is not, we find, like to produce any Changes to our Disadvantage, at least none we can prevent by keeping up our Army, whatever might be done by disbanding a Part of it. Last Session, the War between the Emperor and *Turks* was just upon the Point of breaking out ; and we did not then know, but that *France* or *Spain* would take advantage of that War, to attack the Emperor. This too, I think, would have been no good Argument ; but this likewise is now removed ; for we find

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*France* is so far from attacking the Emperor, that she is labouring to bring about a Peace between him and the *Turks*, and to accommodate all Differences between him and the Court of *Spain*. Therefore, even those who voted for the Number of Forces last Year, may with good Reason oppose keeping up the same Number for the ensuing.

Another Argument, my Lords, which the noble Lord made use of, may shew us how cautious we ought to be of agreeing to any Encroachment upon, or Alteration in, our Constitution. He told us, that the keeping up of a mercenary, Standing Army of 18,000 Men, was an Affair of no extraordinary Nature: For why? Because the same Number was kept up last Year, and has been kept up for several Years. My Lords, the keeping up of any such Army in Time of Peace, is an Encroachment, and but a late Encroachment, upon our Constitution; therefore, the keeping up of any Number of regular Troops, is an Affair of an extraordinary Nature; but, the keeping up of such a numerous Army, is an Affair of a most extraordinary Nature, so extraordinary, that it ought never to be agreed to but in Times of the most apparent, and most imminent Danger; and, the Reasons for apprehending that Danger, ought always to be communicated to Parliament by his Majesty, either in his Speech from the Throne, or by a special Message. If we do not lay this down as an inviolable Maxim, the keeping up of such a numerous, perhaps a more numerous Army, will become an Affair of Course; and, if it should become so, I can see no Reason for not establishing it by a perpetual Law. I wish the Bill now before us had been a Bill of such a Nature. Such a Bill would have made People sensible of their Danger; whereas, by the Method we are in, we are like to have a perpetual Army palmed upon us, under colour of an annual Bill. An Army kept up by a perpetual Law, would be as much an Army kept up by Consent of Parliament, as an Army perpetually kept up by an annual Bill. I can see no Difference between the one and the other: They are both dangerous, and equally dangerous to our Constitution; and were thought so by the whole Nation, except a few Courtiers, in the Reign of King *Charles II.* when the Custom of keeping up of a few regular Troops, under the Denomination of Guards, was first introduced. I do not know how the Words, *unless with Consent of Parliament*, crept into the Claim of Right; for, from the Journals of Parliament it appears, the House of Commons in King *Charles II.*'s Time, were of Opinion, that the keeping up a Standing Army in Time

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of Peace, was inconsistent with our Constitution, whether Annott. Geo. II. 1737-8. that Army was kept up with or without the Consent of Parliament : In their Resolutions, there is no such Exception ; and, if the keeping up a Standing Army in Time of Peace be wrong, as it must be, if it be inconsistent with our Constitution, I am sure the Sanction of Parliament, whether by an annual or perpetual Law, cannot make it right.

I need not, I believe, my Lords, trace the noble Lord in his Travels over *Europe*, in order to extenuate the Dangers he has endeavoured to pick up, for shewing the Necessity we are under at present, for keeping up such a numerous Army. I think, all the Dangers he has mentioned, either abroad or at home, depend upon May-be's, which must always subsist. A Minister may die,——a Prince may have ambitious Views,——a Prince's Success may raise the Jealousy of others,——his Misfortunes may revive their Hopes,——there may be a Design to invade us, tho' we have not, at present, the least Item of it,——*Spain* may refuse to do us Justice, or may be assisted by the *French*, tho' we have yet no Reason to expect either the one or the other,——a Plot for an Insurrection may be forming, tho' we have not, at present, the least Intimation of any such thing, no, not even from common Reports or Surmises :——And all these May-be's or Possibilities, will become Probabilities, or Certainties if we should reduce our Army.

Are these Arguments, my Lords, that can convince any Man in the Kingdom, of our being under a present Necessity, for keeping up a numerous Standing Army in Time of Peace ? If they are, they must always be so. Can there ever be a Minister who can be supposed to be immortal ? If there could, the present Minister in *France* has as good a Title, and deserves as much to be immortal, as any Minister ever did ; but, luckily for us, he is not so ; for, he has done this Nation more harm by his peaceable Measures, than he could ever have done by any warlike and ambitious Projects. Can there ever be a Time, when it can be supposed that no Prince or State in *Europe* has any ambitious Views ? If there could, it would be the present ; for, no Prince in *Europe* seems, at present, to have an ambitious View, at least against any of his Christian Neighbours : A certain Queen, indeed, may be supposed to have some ambitious Views in Favour of some of her Children ; but her Ambition is now restrained, by the Guaranty of *France* ; and that, I believe, will be sufficient without our Assistance. Can there ever be a Time when it can be supposed impossible for any Prince in *Europe* to be meditating an Invasion upon us ?

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If there could, the present would be that Time ; for, there is now no Prince in *Europe* that either has, or is preparing a Fleet that can give us the least Umbrage. Can there ever be a Time, when it can be said, that no Man is mad enough to be conspiring against the Government, or contriving some such Plot as that which was lately executed in *Westminster-hall*? If there could, I am sure we might say so at present ; for, however much dissatisfied the People may be with some Persons concerned in the Administration, none of the Mobs or Tumults that have lately happened, have expressed the least Repentment against his Majesty, or any of the Royal Family, nor the least Dislike to our present happy Establishment.

It is not Possibilities, my Lords, it is not Probabilities, nothing but certain, immediate Danger, ought to induce us to agree to the keeping up of such a numerous Army as we have at present. A foreign Power preparing to disturb the Tranquillity of *Europe*, or to invade this Nation ; a Plot or Conspiracy actually formed, and in Part discovered, would be a good Reason for our continuing the same Number of Forces in Pay for one Year longer ; and, if his Majesty had, either by his Speech, or by a special Message, told us, that he had Reason to apprehend such a Thing, I am convinced no such Question as the present would, this Day, have been started ; I am sure I should not have agreed to it. But I have no such Veneration for last Session of Parliament, or for any former Session of Parliament, as to agree to the keeping up a Standing Army of 18,000 Men, only because they thought fit to agree to the keeping up of that Number.

In talking of providing against what may happen, we seem, my Lords, to forget the dictatorial Power, by our Constitution always lodged in the Crown, which enables his Majesty to take Care, during the Recess of Parliament, *ne quid respublica detrimenti capiat*. We seem to forget, that, as long as we have Money to pay for them, we may, upon any Emergency, have what Troops we please from *Germany*, and have Ships always ready at Command to send for them. We seem to think there are no Men in the Kingdom able to bear Arms, but such as are listed in the Army. We seem to think, that if any Regiments were disbanded, both Officers and Soldiers would all run immediately out of the Kingdom. Do not we know, that the Officers would all be kept upon half Pay, and the Soldiers would betake themselves to their former Employments, or would become Labourers in the Country, where such Servants are much wanted ? Suppose the Army should be reduced much lower than is now proposed,

posed, and suppose, after that Reduction, and during the Anno 11. Geo. II. Recess of Parliament, a Rebellion should break out, or an Invasion should be threatened, could not his Majesty, by Virtue of that Prerogative, which I have called the dictatorial Power, send for regular Troops from *Holland, Germany, or Denmark*? Could not he immediately issue Orders for raising new Regiments? The Officers would be all ready at his Call, and the old Soldiers, if they refused to list, might be forced into the Service. I should be glad to know, why a Soldier may not be pressed, as well as a Sailor? I should be glad to know, why we should keep our Soldiers in continual Pay, and dismiss our Sailors as soon as the Danger is over. Our Politics in this are, I think, a little preposterous, as well as in several other Cases, I could mention. In my Opinion, we have more Reason to keep our Sailors in continual Pay, than our Soldiers. The latter cannot well leave us, the former may easily leave us; and, by the Treatment they meet with at Home, are often forced into foreign Service. To which let me add, that a Plowman or a Tradesman may much sooner learn to be a Soldier, than he can learn to be a Sailor.

These Considerations, my Lords, shew, that, if the noble Lord's may-be's should become shall-be's, a Reduction of our Army could be no great Disadvantage to us, nor could it much enhance any Danger we can be under from Invasions or Insurrections; but, with respect to the Dangers that may ensue from a Reduction, or from the keeping up of our Army, I find, some Lords are apt to judge after a very odd Manner. When we talk of a Reduction, and the Dangers that may from thence ensue, they look upon Possibilities as Probabilities, and upon Probabilities as Certainities; whereas, when we talk of keeping up a numerous Army in Time of Peace, and the Dangers that may from thence ensue, their Method of judging is directly reversed: Certainities are with them then nothing but Probabilities, Probabilities nothing but Possibilities, and possible Events they take to be such as cannot possibly happen. This has been the Way that Courtiers have judged, ever since we first began to keep up any Thing like regular Troops; and, they seem still to continue to judge in the same Way, though Experience has shewn, that they ought to judge quite otherwise.

Necessity, my Lords, was pleaded for our first Standing Army, and that Necessity was to last but for a Year, that Army was to be kept up but till next Session of Parliament. The Friends of Liberty and our Constitution then prophesied, that the Necessity then pretended would last for ever, and  
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that a Standing Army, if once introduced, would become perpetual, which the Courtiers pretended to think impossible. Experience has since shewed us the Certainty of what the Courtiers then pretended to think impossible. A Body of Guards were the first regular Troops kept up by Authority of Parliament: The Friends of Liberty look'd upon these Guards as the Seeds of a Standing Army, and prophesied, that, like all pernicious Weeds, they would increase vastly, that they would increase so as to choak our Constitution. The first Part of this Prophecy has been fulfilled, God grant the other may not. A Courtier would then have said, it was impossible, that a Body of Guards, not exceeding 800 Men, should increase to an Army of 18,000; yet we see it has come to pass; and, upon every Occasion, the Word Necessity was urged for increasing, as it was at first urged for establishing, this Body of regular Troops. A few more Troops were always said to be necessary, a few more could subject us to no Danger; so that, by a few more, and a few more, we at last arrived at the Number we have now on foot. This, my Lords, is a most dangerous Doctrine; an Army is like a Medicine, which ought never to be taken, but in a dangerous Distemper, and then it may be a good Remedy, if taken to a proper Quantity; but, by adding a drop more, and a drop more, you may make it a Poison; and, an able Physician only can determine, where the Remedy Ends, and where the Poison begins. A Quack, through Ignorance, or for some little selfish End, often poisons his Patient by giving too large a Dose, or ruins his Health, by given him the Medicine when he is in no Danger. Like him, if you keep up a numerous Army, when there is no Danger, you'll destroy the Health of your Constitution; if you keep up a greater Number than is proper, you'll poison it.

To keep up a numerous Army, my Lords, for the Sake of guarding against Dangers that can only be said to be possible, is to expose ourselves to those Dangers that are probable, for the Sake of avoiding those that are only possible; which no Man can say is prudent. Nay, I may go farther, I may say, that the keeping up of a numerous Army in Time of Peace, is no proper Safe-guard against those possible Dangers it is kept up to prevent, and exposes us to Dangers that are certain. Slavery and Arbitrary Power are the certain Consequences of keeping up a Standing Army, if it be kept up for any Number of Years. It is the Machine by which the Chains of Slavery are riveted upon a free People, and wants only a skilful and proper Hand to set it a going. This it will certainly at last, and perhaps soon, meet with,  
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if you do not break it to Pieces, before the Artist takes hold of it. It is the only Machine by which the Chains of Slavery can be riveted upon us: They may be secretly prepared by another, by Corruption, which, like the dark and dirty Channel through which it runs, may hiddenly and imperceptibly forge our Chains; but by Corruption they can be forged only: It is by a numerous Standing Army that they must be riveted. Without such an Army, we should break them asunder as soon as we perceived them, and should chop off the polluted Hands of those that had prepared them.

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It is no Argument, my Lords, to say, we have kept up an Army for a great many Years without being sensible of any Danger. A young, fiery Horse is never brought at once to submit to the Curb, and patiently to receive the Rider upon his Back. If you put the Bit into his Mouth without any previous Preparation, or put a weak and unskilful Rider upon his Back, he will probably break the Neck of his Rider; but by Degrees you may make him tamely submit to both. A free People must be treated in the same Manner: By Degrees they must be accustomed to be governed by an Army, by Degrees that Army must be made strong enough to hold them in Subjection. If you should at once attempt to govern your People by a military Power, and before they are a little prepared for the Yoke; if you should mount your Army upon them, before it has gathered Strength to keep its Seat in the Saddle, your People would probably break the Necks of those that attempted to ride them. But we have already, for many Years, been accustoming our People to be governed by an Army, under Pretence of making use of that Army only to assist the civil Power; and by Degrees we have been for several Years encreasing the Number, and consequently the Strength, of our Army. At the Accession of his late Majesty our Army was but 6000. It soon mounted up to double that Number; and, under various Pretences, it has been encreasing ever since. But within these few Years, three Regiments, which make near 2000 Men, were added to it, under Pretence of strengthening our Garrisons at *Gibraltar* and *Portmahon*; and this last Year, a new Regiment of 600 Men has been added to it, under Pretence of securing our Colony of *Georgia*. I find no Fault, my Lords, with securing our valuable Possession of *Gibraltar* and *Portmahon*, or with securing any of our Plantations in *America*; but I think it was needless to encrease our Expence, and our Danger, by raising new Regiments for that Purpose, when we had so many useless Regiments at home, some of which might have been sent upon that Service. I say useless; for with respect to any

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good Use that can be made of them, I think them not only useless but dangerous: Whereas, if they had been sent abroad, they would have been useful, and would have been much less dangerous: To which I must likewise add, that they would have been less expensive; for I must observe, that the Regiments we send abroad cost the Nation less Money, in proportion to the Number of Men, than those we keep at home; because, in the latter, there are always more Officers in proportion than in the former; which shews, tho' I shall not pretend to give the Reason, that abroad, the Soldiers of our Army are thought the most useful, but at home the Officers.

From hence we may see, my Lords, that our Army is almost every Year increasing; and from hence I must conclude, that Slavery under the Disguise of an Army for protecting our Liberties, is creeping in upon us by Degrees; for if no Reduction be made this Year, I shall expect, in a few Years, to hear some Minister, or Favourite of a Minister, terrifying us with imaginary Plots and Invasions, and making the Tour of *Europe* in Search of possible Dangers, in order to shew us the Necessity of keeping up a mercenary Standing Army, of treble the Number we have at present.

Attempts to overturn the Balance of Power in *Europe*, Designs to invade these Kingdoms, and Plots or Conspiracies against our Government, I shall grant, are dangerous Things; but now, my Lords, let me examine, if the keeping up of a Standing Army in this Island in Time of Peace, be a proper Method for guarding against any of those Dangers. If we have a mind to prevent Invasions, or to preserve the Peace, or Balance of Power in *Europe*, and for that Purpose, to preserve an Influence upon the Councils of foreign Princes; the increasing or keeping up a numerous Standing Army is, in my Opinion, the worst Method we can take. Did the increasing of our Army in the Year 1725, do us any Service? Did it add to the Weight of our Influence upon the Councils of any Potentate in *Europe*? Every one knows it did not. Again, upon the breaking out of the last War, we increased our Army. Did that preserve or restore the Peace of *Europe*? 'Tis true, there was a Plan of Peace concerted by some Powers I could name: But did either of the Parties engaged in War, shew the least Regard to that Plan? Did they not privately, and between themselves, conclude a Peace upon a very different Plan? A Plan which we would never have proposed, a Plan which the Emperor would never have agreed to, if we had at that Time had the least Influence upon his Councils; and therefore, I may say, a Plan which was concerted and agreed to without our Knowledge or Participation. The Cause of our ha-

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ving lately had so little Interest upon foreign Councils is plain ; Annot. Geo. II. 1737-3.  
 for as we have no Frontier to defend, nor any fortified Towns to garrison, while we keep up a numerous Standing Army, all the Powers of *Europe* will conclude, that our People are generally disaffected, and that our Government is obliged to keep up a numerous Standing Army, in order to extort from the People, by Force and Fear, that Obedience, which it cannot expect from their Affection or Esteem. This will not only prevent our having any Influence upon foreign Councils ; but it will make our Neighbours despise, insult, and encroach upon us ; and it will encourage them to form Designs for invading us, if we should at any Time dare to vindicate our Rights, or revenge the Insults that have been put upon us.

This, I am afraid, my Lords, is the Case at present with regard to *Spain*. I believe that Nation would not have dared to have treated us in that Manner they have done, if they had not judged, from our keeping up a numerous Army, that there is a formidable, disaffected Party amongst us ; and if they should flatly refuse to give us Satisfaction, I believe it will proceed from the same Cause. But I do not believe they will flatly refuse. If a Rogue were in Possession of my Estate, I should think him a Fool as well as a Rogue, if he flatly denied Restitution, as long as he could by fair Promises prevent my going to Law ; or if he flatly denied to make any Restitution, when he found that I would be satisfied with a Restitution of one Moiety. *Spain* will, I believe, do as they have done, they will give us fair Promises, or they may perhaps offer a partial Reparation ; but we can expect no full and effectual Satisfaction or Security, as long as they think we are afraid of our own People ; therefore the only Way to obtain either, is to shew them, by a Reduction of our Army, that we are neither afraid of our own People, nor of any Invasion they can attempt.

In the last War we made upon *Spain* ; I do not mean the last they made upon us ; for in the Years 1725 and 6, they made War upon us, though we made none upon them, being then, it seems, in a Christian-like Disposition, which, I believe, has encouraged them to make a sort of War upon us ever since : But I mean, my Lords, in the War which happened between the two Nations in the Year 1718, it was not the Smallness of our Army that made them attempt to invade us, but the powerful Assistance they expected, from the Party which had but just before, without Hopes of any foreign Assistance, dared to take Arms against the Government. Nor was it the Regent of *France* that compelled the *Spaniards* to make Peace with us ; for though he

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invaded

Annott. Geo. II. invaded them with an Army, yet they knew they had a great Party of Friends in *France*, and that the Regent would have run the risk of being turned out of the Regency, if he had attempted to do any great Prejudice to their King, who, by his Birth, had a better Right to the Regency of *France*, than the then Regent had. But after their Fleet was destroyed by the Squadron we sent to the *Mediterranean*, and the Invasion they intended against us, disappointed, they saw they could do us no Prejudice, and that we might ruin them, by cutting off their Correspondence with their Dominions in *America*, or by sending a Fleet with a few Troops to ravage those Dominions. The Case is now the same, they will not so much as attempt to invade us, unless they expect a powerful Assistance from our own People; and they can no other way do us any considerable Damage: Whereas we may ruin them, without employing above 5 or 6000 Land-Forces in any Expedition we undertake against them; and if 5 or 6000 be sufficient for that Purpose, it would be Madness in us to put ourselves to the Expence of sending 8 or 10,000 upon any such Expedition.

But we are likewise, it seems, my Lords, in Danger of Plots and Conspiracies at home, and a numerous standing Army is the only Method for preventing them. My Lords, I neither think we are in Danger of Plots or Conspiracies, nor do I think a numerous standing Army the proper Method to prevent them. In former Times, when there was a powerful Party in the Kingdom that was really disaffected, a standing Army might be necessary for preventing their Attempts; tho' even then, it was not necessary for preventing their Success; but now, whatever Dissatisfaction there may be among the People, there is no Disaffection. There may, indeed, be still some old Men amongst us, who, through Pride and Obstinacy, adhere to the exploded Principles of passive Obedience and Non-resistance; but all the rest of our Fellow-subjects are convinced of the monstrous Absurdity of such Doctrines. They all see the Beauty of Revolution-Principles: They know that such Principles only can preserve our Liberties, and render us a glorious People. This is now so well and so universally understood, that I do not believe there are three young Jacobites in the Kingdom; and the few old who are still alive, have by Experience been made so cautious, that there is no Danger of their engaging in any desperate Attempt.

From hence, my Lords, it must appear, we can be in no Danger from Disaffection; but upon the present Question, which has so often been a Question in this House, I find Disaffection and Dissatisfaction are usually confounded, though they are in themselves very different, and proceed from different

ferent Causes. Disaffection proceeds from Principles that are inconsistent with our Constitution, and can seldom be cured but by the Death of those that are tainted with such Principles. Disaffection proceeds from our Government's pursuing wrong Measures, and may, nay must be cured by a Change of Measures. I shall grant there is at present a most universal Disaffection among the People; and that Disaffection, I am convinced, proceeds chiefly from our having so long kept up such a numerous Army. All those who are of Revolution-Principles, must be dissatisfied with a Measure, which is so directly contrary to the Principles they profess; for it is ridiculous to preach up the Doctrine of Resistance, and at the same Time provide the Government with such an Army as will be able to prevent or defeat any Resistance the People can make. Reduce your Army therefore, and those who are now dissatisfied will become your most affectionate and most faithful Friends. But what will be the Consequence of a contrary Measure? If you admit that the Discontent or Dissatisfaction of the People makes it necessary to keep up a numerous standing Army, that Army, as it is the Effect, so it will be the Cause of Dissatisfaction, and will be every Year begetting its own Necessity. The longer you keep it up, the more you must increase it; and the more you increase it, the more you will increase the Dissatisfaction of the People; so that by endeavouring to prevent Danger, you will bring it upon you; by endeavouring to add to your Strength, you will encrease your Weakness.

The most proper Method, therefore, for preventing Danger from the Dissatisfaction of the People, is to begin to diminish your Army. Let us in this, my Lords, follow the Example of his late Majesty, who, in the Year 1718, made a great Reduction of his Army, notwithstanding the War he was then engaged in with *Spain*, notwithstanding the many Friends the Pretender had then in the Kingdom, many more than he can be supposed to have at present. By that Reduction, and the Speech his Majesty made upon that Occasion, he certainly gained the Hearts of his People, and thereby added more to the Strength of his Government, and Security of his Crown, than if he had added 10,000 Men to his Army.

A numerous standing Army, may, 'tis true, my Lords, prevent Plots and Conspiracies among a dispirited, a disarmed and dastardly People; but, does that prevent Plots and Conspiracies among those of the Army? No, my Lords, in all Countries, where such Armies have been long kept up, we find Plots and Conspiracies against the Government more frequent and fatal, than in Countries which have no standing Armies.

ANNOT. GEO. II.

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**Armies.** The Plot called the Bishop of *Rochester's*, was so far from being founded upon the Smallness of our Army, that those Conspirators, if they had any concerted Plot, trusted chiefly to the Army for the Execution of their Design. It was by means of the Friends they imagined they could make among the common Soldiers, that they were to seize upon the Tower of *London*, and to overturn our Government, as it were, in an Instant. Their Plot, 'tis true, did not meet with any Success; and 'tis no Wonder, considering the low and improper Tools that were concerned; but, I may now prophesy, that, if we keep up for many Years longer, such a numerous Army as we have at present, some such Plot will at last come to be executed; for if the Guards only here about *London* should mutiny, at a Time, when the People are generally dissatisfied with the Government, they might, perhaps, bring about as quick, and as thorough a Revolution in this Kingdom, as ever was brought about in *Turkey*, by the Janizaries at *Constantinople*.

I think, I have now shewn, my Lords, that we are at present in no real Danger of having the present Tranquillity in *Europe* disturbed, or of having our own Tranquillity disturbed either by Invasions or Insurrections; I think, I have shewn, that the keeping up of a numerous standing Army, is the most improper Method we can take, for preventing or guarding against any of those Dangers; and, I hope, I have shewn, that the keeping up of such an Army, will always be of dangerous Consequence to our Liberties and Constitution. To pretend, that our Liberties can be in no Danger from our Army, because it is commanded by Gentlemen of the best Families and Fortunes in the Kingdom, is an Argument I am surprized to hear made use of; for, our Liberties ought to depend upon our Constitution, and not upon the Honour of the Gentlemen of our Army. I can, 'tis true, depend upon the Honour of those who are, at present, the Officers of our Army; but, my Dependence is not founded upon their being Gentlemen of Family or Fortune: It is founded upon their personal Characters only. I have the Honour to be acquainted with many of the chief Officers of our Army: I know their Honour, and the Regard they have for the Liberties of their Country; and, upon that Knowledge, I can depend. If I were not acquainted with them, I should have but little Regard to their being Gentlemen of Family or Fortune: for, in all Countries where arbitrary Power has been established, many Gentlemen of the best Families and Fortunes, have, thro' Fear or Ambition, become the Tools of Ministers, and have assisted or suffered them to sacrifice the Liberties of their Country.

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For this Reason, my Lords, I can depend only upon the personal Characters of Officers, and, even this would be but a precarious Dependence, if I did not likewise depend upon his present Majesty's Wisdom and Goodness; for, as all the Gentlemen of Honour in the Army, may, at the Pleasure of the Crown be dismissed, and proper Tools put in their Room, the personal Characters of those who are the Officers of our Army, can furnish no Man with any certain Security or Dependence. But I am fully convinced, no such Thing will, or can be done, during his present Majesty's Reign: While these Kingdoms are blessed with a Continuance of his Reign, I am sure, he will neither attempt, nor allow any of his Ministers to attempt, to make a bad Use of our Army, were it much more numerous than it is; and yet, my Lords, I must bemoan, because I cannot account for, some Things that have lately happened: Some Gentlemen have been lately turned out of the Army, without having had any Crime so much as alledged against them; Gentlemen who, to the Merit of long and faithful Services, had added the Right and Title of Purchase. These Things, I say, I cannot account for. His Majesty had, certainly, good Reasons for what he did; but, the Knowledge, I have of the Gentlemen, and the Regard I have for them, oblige me to think, that those Reasons were founded on Misrepresentation; and such Accidents give me the greater Concern, because, when Officers of the Army are dismissed without any Cause assigned, the World are apt to judge, it was not for their Vices, but for their Virtues. These late Examples give me terrible Apprehensions of what may happen in some future Reign; and therefore, I must think, it is high Time for us to begin to reduce our Army.

Ann. II. Geo. II.

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Lord Hinton.

My Lords, considering how often the Affair now before us, Lord Hinton. has been debated in this House, I am surprized, that those who speak upon one Side of the Question, should still continue to make use of those Arguments, which have been so often shewn to be built upon a wrong Foundation. They always suppose, that the keeping up of a military Force is a late Encroachment upon our Constitution, and inconsistent with the Liberties of the People. This Supposition they take for granted, and upon this they found most of the Arguments they make use of, in favour of the Reduction they propose. Now, I can neither grant, that the keeping up of a military Force is a late Encroachment, or any Encroachment, upon our Constitution; nor can I grant, that it is inconsistent with the Liberties of the People; for in this Country it has always been the Custom, in all Countries it is necessary, to have some sort

Anno 11. Geo. II. 1737-8. fort of military Force, upon which the People can depend, not only for defending them against foreign Invasions, but for enabling the civil Magistrate to execute the Laws of the Society, against great and powerful Offenders.

This military Force, my Lords, which I say is necessary in every Country, may consist in their Militia, or it may consist in a Body of regular Troops kept in continual Pay; but whatever it consists in, it must be such a one as may be depended on, for the two Purposes I have mentioned; therefore when a Society finds it cannot trust to its Militia, a Body of regular Troops must necessarily be kept in continual Pay; and that which is absolutely necessary for the Safety of the People, cannot be an Encroachment upon our Constitution, or inconsistent with the Liberties of the People. In former Times, when none of our Neighbours kept any regular Troops in Pay, and when our Militia, and those possessed of military Fees or Tenures were all bred up to military Discipline, and provided with proper Arms for the Defence of their Country, as well as themselves, we could depend upon our Militia; but of late Years, our Neighbours have all begun to keep large Bodies of regular Troops in continual Pay, and our People have applied themselves so much to Arts and Industry, that they have not Time to breed themselves up to military Discipline, nor will they be at the Expence of providing themselves with Arms; therefore we can now put no Trust or Confidence in our Militia, either for defending us against foreign Invasions, or for enabling the civil Magistrate to execute our Laws against powerful Offenders; and for this Reason we are now, and have been for some Years, under a Necessity of keeping up a large Body of regular Troops in continual Pay; which Body of regular Troops must always bear some Proportion to the Numbers of regular Troops, with which we may at any Time be invaded, and to the Numbers of those who we have Reason to apprehend, want only an Opportunity for rising in Arms against the Government, and Laws of their Country.

Thus it appears, my Lords, that the keeping up a Body of regular Troops, is no late Encroachment upon our Constitution: It is only an Alteration we have been obliged to make, with respect to that military Force which we must always have, for defending us against foreign Invasions, and domestic Offenders. And that the keeping up of a Body of regular Troops is not inconsistent with the Liberties of the People, must appear, I think, not only from Experience, but from its having been so long and so often agreed to by Parliament; for, from an Experience of so many

many Years standing, I should think that some Proofs or Tokens of this pretended Inconsistency would have become evident, at least I must think, that the Signs or Symptoms of this Inconsistency, if there had been any such Thing, could not so long have escaped the Judgment and Penetration of Parliament; and whatever some Lords may be pleased to think of our Parliaments since the Revolution, yet I must say, I have so good an Opinion of their Honour, and Regard for their Country, that I am convinced no one of them would have agreed to the keeping up a Body of regular Troops, if they had thought it inconsistent with the Liberties of the People.

ANNOT. II. GRO. II.

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But though I do not think that the keeping up a Body of regular Troops is in itself inconsistent with the Liberties of the People, yet, my Lords, I shall readily grant, that a Standing Army, not under the annual Check of Parliament, might be so modelled as to make it a proper Instrument for overturning the Liberties of the People. It is not the Army that is of any dangerous Consequence to our Liberties, but it is the Use that may be made of the Army, after proper Care has been taken to fill it with such Men, as may be fit for the worst Uses that can be made of an Army. This is the only Danger we can be exposed to by the keeping up of an Army: This is a Danger we ought to have a watchful Eye upon; and this Danger we may easily guard against, or prevent, as long as our Army is kept up by an annual Bill for that Purpose; which shews the Difference between an Army kept by an annual Bill, and an Army kept up by a perpetual Law, so clearly, that I am surprized to hear it said, they are both Standing Armies, and equally dangerous to our Constitution. Whilst Recourse must be annually had to Parliament for a new Law for keeping up our Army, it will always be in the Power of Parliament to dissolve that Army, by refusing their Authority for keeping it up, in case any Attempt should be made towards modelling that Army, so as to make it fit for bad Purposes; or they may throw in such Regulations into the Law for keeping it up, as must prevent all such Attempts for the future; whereas, if our Army should be once established by a perpetual Law, it would be out of the Power of Parliament either to dissolve the Army, or to provide against such Attempts: It would be then properly a Standing Army; for, I think, the Army ought always to take its Appellation from the Law or Custom by which it is kept up. Those Laws or Customs which are designed to be perpetual, we generally call the Standing Laws or Customs of a Country; but I never yet heard an annual Law, called a Standing Law,

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nor would it deserve that Name, though it should be annually agreed to for a whole Century together ; and for the same Reason, I think, that as long as our Army is kept up by an annual Law, it can never be properly called a Standing Army.

I shall agree, my Lords, that no greater Army ought ever to be kept up than the present Necessity requires ; but this does not proceed from the Danger, but from the Expence ; and because of the Expence, I should be fond of agreeing to a Reduction, if our Affairs at Home or Abroad could admit of it ; but I shall never be for exposing the Peace of my Country, and the Safety of my fellow Subjects, to Invasions and Insurrections, for the sake of saving the Expence of keeping up 5 or 6000 regular Troops. Therefore, considering the great Number of regular Troops kept up by every one of our Neighbours, and the present universal Degeneracy and Neglect among our People, with respect to Arms and military Discipline, I shall always be extremely cautious of agreeing to any Reduction, unless I think we are in a State, not only of the most profound Tranquillity, but of the most certain and apparent Security ; which I shall never think, as long as it requires so much Art, and such a power of Eloquence, as the noble Lords, who have spoke upon the other Side of the Question, have made use of, for shewing that this is our happy State at present.

The very Question now under our Consideration, my Lords, must convince us, that we shall always be under a necessity of keeping up some certain number of regular Troops ; for the noble Lord who made the Motion, and the noble Lord who has spoke in favour of it, have endeavoured to shew, that we are now in as great Tranquillity and Security, as we can ever hereafter be supposed to be in ; from whence I must conclude, that even they are, and, indeed, every Gentleman must be, of Opinion, that it will always be necessary for us to keep some regular Troops in pay. This, I say, my Lords, is a Necessity we must always be under, as long as the far greatest Part of our People apply themselves so much to Arts and Industry, as to neglect entirely the breeding themselves up to Arms and military Discipline ; and this will always be our Case, as long as we are an industrious, trading, and consequently a rich People ; for from all Histories we may observe, that the most warlike People have generally been the most idle, and of course the most destitute of Riches. That military Force, therefore, which is necessary for protecting us against our foreign and domestic Enemies, must, while we remain in our present Circumstances, consist in the regular Troops we keep in continual

tinual Pay ; and the Number of those Troops ought always, Anno 11. Geo. II.  
 as I have said, to be in Proportion to the Danger we hap- 1737-8.  
 pen to be in at the time. As to the Danger we are now in  
 from foreign Enemies, I shall freely own, my Lords, that,  
 considering our Superiority at Sea, if we were in no Danger  
 from domestic Enemies, a less Number of regular Troops  
 than we have at present, might be sufficient to guard us a-  
 gainst Invasions ; because a less Number would be able to  
 defeat any Invasion, that could be made upon us suddenly  
 and unawares, if we were sure they would not be joined by  
 any great Number of our own People ; therefore, I think it  
 unnecessary for me to endeavour to answer those Arguments,  
 the noble Lords have made use of, for shewing, that we are  
 at present in no Danger from Abroad : I shall endeavour to  
 answer those Arguments only, which they have made use of,  
 for shewing, that we are in no present Danger from our do-  
 mestic Enemies ; and, if I can shew that we are now in  
 some Danger from our domestic Foes, I must observe, that  
 while we are so, we can never be in an absolute Security  
 against foreign Danger ; for that Security which is founded  
 upon the seeming Resolutions of foreign Princes, or the se-  
 vere Countenance of foreign Courts, is a Security we ought  
 never to depend on.

My Lords, it is the Danger we are in from our domestic  
 Enemies, that makes me against a Reduction of our Army ;  
 it is this that enhances every foreign Danger we can appre-  
 hend, and makes that seem probable which would other-  
 wise be impossible. The noble Lord, who spoke last, was  
 pleased to make a Distinction between Disaffection and Dis-  
 satisfaction, which at other times, or under other Govern-  
 ments, might be a just Distinction ; but, I cannot allow,  
 that it is applicable to our People under the present Go-  
 vernment. When a Government is pursuing wrong Measures,  
 when those in Power are grasping at more than they ought  
 to have by our Constitution, or committing Acts of Violence  
 and Oppression, the People have reason to be dissatisfied ;  
 and in that case there is no removing the Dissatisfaction,  
 but by a change of Measures, and bringing those to condign  
 Punishment, who were the Authors of that Dissatisfaction :  
 But under our present Government, no Measures have been  
 pursued, but what have been approved of by Parliament ;  
 no Encroachments have been made upon the Liberties of the  
 People ; no Acts of Fraud or Oppression have been com-  
 mitted, or at least none such have been patronized or coun-  
 tenanced by our Government ; therefore, if there be any  
 amongst us that appear discontented, it must proceed from  
 Disaffection, or from private Resentment, perhaps from a  
 1737-8. N n 2 Resent-

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Resentment founded upon their having been refused, what it would have been imprudent or unjust in our Government to have granted, or upon their not being indulged in things that are inconsistent with our Constitution, or with the Peace and Happiness of Society; and that Discontent which proceeds from such a Resentment, or, indeed, from any Resentment of a private Nature, I cannot call by so soft a Name as that of Dissatisfaction: I must call it Sedition; and the only way of guarding against Sedition, is to enable our Government to prevent its being in the Power of the Seditious to do Mischief. As a certain Number of regular Troops must be kept up; as no Number of regular Troops kept up according to our present Method can be of dangerous Consequence to our Constitution, or in the least contrary to Revolution-Principles; and, as no greater Number of such Troops has ever been kept up, than what was thought necessary by both Houses of Parliament; therefore, the keeping up of such a numerous Army, could never afford Matter of Discontent to any Man, who has nothing in view, but the Good of his Country, and the Preservation of our happy Establishment.

If there were no Discontents in the Nation, but what proceeded from a just Dissatisfaction, I am sure there could be none, and, in that case, I should be for the Reduction proposed; but, my Lords, there are great and general Murmurs and Discontents in the Nation, and all those Murmurs and Discontents proceed originally, I believe, from Disaffection and Sedition. It is the Disaffected and the Seditious, my Lords, that magnify every accidental Misfortune we meet with, that misrepresent the most prudent Measures the Government can take, and that instil into the Minds of the People such Notions of Liberty, as are inconsistent with Society. Power, I shall grant, my Lords, is apt to exceed its Bounds, and may deviate into Oppression; but, I hope, it will be granted, that Liberty is likewise apt to exceed its just Bounds, and may deviate into Licentiousness. When the former happens to be the Case, it is then high Time to think of clipping the Wings of those in Power, by reducing our Army; but when the latter happens to be our Case, will any Man say it is then a proper Time to tie up the Hands of those in Power, or to weaken the only effectual Curb our Government has for restraining the Licentious? This is our unfortunate Case at present: By the Audaciousness of the Disaffected and the Seditious, and by the Lenity of our Laws, as well as of those in Power, there is such a Spirit of Licentiousness spread among the lowermost sort of our People, that I believe, nothing could command their Obedience

dience to the Laws of their Country, but the regular Troops we keep in Pay ; and when the People are ripe for an Insurrection, who knows but some foreign Power may, at unawares, throw in a few Troops amongst us, in order to set that Spirit in a flame, which is now smothered by our having a sufficient Number of regular Troops in every Corner ?

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I hope, my Lords, I need not take up your Time with giving you any Examples of the Licentiousness, that now reigns among the lowermost Sort of our People. The great Countenance and Protection the Smugglers meet with, in every Corner of the Kingdom, from the common People, and I wish I could not say, from some of a superior Rank ; the many Mobs and Riots that have happened on account of Turnpikes ; and the unaccountable Opposition that has been made to one of the best and most necessary Laws that was ever enacted, I mean the Law against retailing spirituous Liquors ; must convince every Man, that there is such a Spirit of Licentiousness among the Vulgar, as can neither be corrected or restrained by the civil Power, without the Assistance of regular Troops ; and as this Spirit of mobbing is spread over the whole Kingdom, as Mobs and Tumults are always most hurtful and most dangerous to the best Sorts of People, and to the most worthy and most diligent Magistrates, they might do infinite and irreparable Damage, if there were not a Body of regular Troops, in or near every Place where any such can happen : As these Troops are always near at Hand, and ready to march to the Assistance of the civil Magistrate, though they cannot entirely prevent Mobs, yet it is certain they render them less frequent, and prevent their doing the Mischief they would otherwise do. This is an Advantage now enjoyed in every Part of the Kingdom ; whereas, if we make the Reduction proposed, we may still perhaps enjoy it here about *London*, but a great many Country Places must be left entirely destitute of Troops, and consequently the better sort of People left a Prey to a licentious and unruly Populace.

For this Reason, my Lords, if there were no other, I must be against making a Reduction of our Army, and shall be against it, as long as the present licentious Spirit prevails among the meaner sort of our People ; for whatever Regard former Mobs may have shewn to the illustrious Family upon the Throne, whatever Regard they may have shewn to the Lives or Properties of their Fellow-Subjects, as they have been, and always will be, spirited up by, and much under the Government of the Disaffected and Seditious, if any future Mob should come to such a Head as to deserve



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deserve the Name of an Insurrection, I am afraid they would shew no great Regard, either to the Liberties or Properties of their Fellow-Subjects, or to our present happy Establishment ; and therefore, if the present Question had been moved by any Gentleman of mean Circumstances, or by one who could be suspected of Disaffection or Sedition, I should have answered him in the Words of *Cato* to *Julius Cæsar*, on Occasion of the *Catiline* Conspiracy. *Quasi vero mali, atque scelesti tantummodo in urbe, & non per totam Italiam sint ; aut non ibi plus possit audacia, ubi ad defendendum opes minores sunt. Quare vanum equidem hoc consilium est, si periculum ex illis metuit. Sin in tanto omnium metu solus non timet ; eo magis refert, me mihi, atque vobis timere.*

I hope, I have now shewn, my Lords, that we are at present in great Danger from our domestic Enemies, that this Danger must always, while it lasts, render our Security against foreign Danger precarious, that we have no way of guarding against either of these Dangers, but by keeping up a Body of regular Troops, and that the Number we now keep up, is the least that can at present be supposed sufficient for this Purpose. I know it may be said, that we have our Militia to trust to, and that our Militia will generally be sufficient to guard us against Insurrections at Home, and against all such Invasions as can be made upon us from Abroad. My Lords, there is no Man has a better Opinion than I have of the Courage of our Men in general ; I know they have Strength and Agility superior to most of their Neighbours, and Courage sufficient for enabling them to make a proper Use of their natural Strength and Agility ; therefore, Man to Man, I could trust to them against any equal Number of Troops in the World : But personal Courage, Strength and Agility, without military Discipline, are of little Signification in an Army. If every Man in your Army does not know how to obey the Word of Command, in an exact and regular Manner, in the Day of Battle, your Army must go in Confusion ; and in such a Case, the personal Courage of the Men does but increase the Slaughter ; for after an Army is once put in Confusion, the most courageous must trust to his Heels for his Safety, or die by the Sword of the united Force that attacks him. This is the Cause of that Inequality which has always been found between Militia and regular Troops ; and for this Reason, we can never depend upon our Militia, when regular Troops are brought against them. Even in the late Rebellion, we found we could put no Trust in our Militia, though no regular Troops were then brought against them. The Militia, we know, did us little or no Service, upon that Occasion,

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in any Part of the Kingdom, which is a Fact so notorious, Annor. Geo. II. 1737-3.  
 that I am persuaded it will not be denied ; but, if it were,  
 it could easily be confirmed by a noble Lord now present,  
 who had the principal Share in suppressing that Rebellion.

From hence we may see, my Lords, that our Militia is what we can put no Trust in for defending us against Invasions ; and with regard to our Defence against Mobs and Insurrections, I am sure, whilst the present Spirit of Licentiousness prevails, our Militia can be of no Service, because our Militia is chiefly composed of that Sort of Men, who at present instead of opposing, would probably join with any Mob or Insurrection that might happen. Then with respect to the Execution of our Laws against Smugglers, Destroyers of Turnpikes, and Retailers of spirituous Liquors, I must desire your Lordships would consider, how it would be possible to prevent or punish any one of these Grievances, if we had nothing but our Militia to trust to. Can it be supposed that the Militia of any County upon the Sea-Coast would oppose, much less venture their Lives in apprehending Smugglers ; when it is well known, that there is hardly one Man of mean Circumstances in any of those Counties, and of such your Militia must always chiefly consist, but what is concerned, or has a Brother, a Son, or some near Relation, or intimate Friend, concerned in such Practices ? The Case is the same with regard to those Counties where the Turnpikes have been destroyed, and will always be the same, I believe, in every County where such Offences shall happen to be committed ; and I am convinced no Man expects, that our Militia would protect one who had informed against a Retailer of spirituous Liquors, or that they would rescue him from the Hands of a licentious and cruel Mob : On the contrary, I believe, they would join with the Mob, and would assist them in all the Outrages and Cruelties they commit upon such Occasions. It would be impossible for the civil Magistrate, or the Officers of the Militia, to command their Obedience in any of the Cases I have mentioned ; for when the People in general are so licentious, as to contemn and despise the Laws of their Country, we cannot well expect, that our Militia would shew any Regard to the Authority of a civil Magistrate, or that they would obey the Commands of their Officers.

Thus, my Lords, I have shewn, that our Militia cannot, at present, be depended on for defending us against Invasions, Insurrections, or Tumults ; nor for assisting the civil Magistrate in the Execution of our Laws : But your Lordships will perhaps say, that our Militia may, by proper Regulations and due Care, be made as well acquainted with Military

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tary Discipline, as any regular Troops, and that those Laws, which are found to be disagreeable to the People in general, may be so altered, or such new Laws made in their room, as may be so agreeable, that most Men in the Kingdom will concur in seeing them duly put in Execution. My Lords, when such Regulations are made, and are found to be effectual, it may be a good Argument for reducing, perhaps disbanding, our regular Troops; but, surely, the Possibility of doing such Things can be no Argument for an immediate Reduction. Whether they are possible or not, is what I shall not now take upon me to determine; but I have a great Suspicion, that no Regulations you can make will be found to be effectual for these Purposes. As to the Militia, I do not think you can ever get Men to spend as much of their Time, as is necessary for making and continuing themselves Masters of Military Discipline, when they themselves see no Necessity for so doing, unless you pay them for that Part of their Time they bestow in that Way. If you pay them, it will cost you as much as the regular Army you now maintain, and it will be as great a Loss to the Public, by the Loss of their Labour, during the Time they are employed in Military Exercises; because, if you put your whole Trust in your Militia, you must have, at least, three times the Number of the regular Troops you now keep in daily Pay. And then, with respect to the Laws which are now found to be disagreeable, I am afraid no Regulations you can make, will ever be agreeable, if they are effectual for the End proposed; for few Men, now-a-days, have so much Regard for the Public, as not to avoid paying those Taxes, or Imposts, which are necessary for the public Service, as often as they can do it with Safety; and therefore, most Men will think those Laws severe, that enforce the Payment of such Taxes, and will be apt to favour those who assist them in getting free from the Payment of them, and to oppose the Officers who are employed in collecting them. With regard to the Retale of spirituous Liquors, it is the same: The drinking of such Liquors is now become the favourite Vice of the meaner Sort of People; and tho' it evidently tends to the Destruction of their Health, as well as their Morals, yet, I believe, they will always find fault with, and oppose the Execution of any Law that effectually prevents their indulging themselves in this favourite Vice. From all which I must conclude, that the best Method of securing ourselves against all Dangers of a foreign or domestic Nature, and the best Method for executing those Laws which are necessary for the Good of the Public, is to keep such a Number of regular Troops, in daily Pay, as may be sufficient for these Purposes, according

to the Circumstances we may happen to be in at the Time. Anno 11. Geo. II.  
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This, my Lords, I confess, must always be an Expence to the People, and must be greater or less according to the Number of Troops we keep in Pay; therefore I shall always be for a Reduction, when I think it can be made without subjecting the People to the Danger of a much greater Expence; but as I have observed, that Reductions have generally been attended with Invasions or Insurrections; and as we are, upon such Occasions, obliged not only to increase our own Army, but to call in foreign Auxiliaries, which puts the People to a much greater Expence than they saved by the Reduction, therefore, for the sake of the People, I shall never be for a Reduction, when I think there is the least Danger of an Invasion or Insurrection; and I must think we are in Danger of both, when there is such a Spirit of Disaffection, or Dissatisfaction, or Sedition, call it which you will, as I find reigns in this Nation at present. But besides the Expence of calling in foreign Troops, I must take Notice, my Lords, that if an Army of our own Subjects can be of any dangerous Consequence to our Constitution, I am sure an Army of foreign Troops must be much more so. This is so true, that I believe no one Instance can be shewn, where the Liberties of a free People have been effectually, and irretrievably overturned, without the Assistance of some foreign Auxiliaries; for though it has sometimes happened, that the Liberties of a Country have been encroached on, or for a Time suspended, by an Army of their own People, yet it has generally, I may say always, been found, that that very Army restored their Liberties as soon as they became sensible of the Injury they had done their Country; therefore, I hope, all those who are real Friends to the Constitution, and Liberties of this Kingdom, will be against any Measure, which may probably give our Government a handle for calling in foreign Troops to their Assistance; and as, in our present Circumstances, this may probably, in my Opinion, be the Consequence of reducing our Army, therefore I am certain no Lord, who thinks as I do, can give his Assent to it.

Whilst our Army, my Lords, is composed wholly of our own Countrymen, commanded by Gentlemen of the best Families and Fortunes in the Kingdom, and kept up only from year to year, by Authority of Parliament, it can never be of dangerous Consequence to our Constitution, nor can it be so garbled as to be made to serve any bad Purposes. If any such Attempts should be made, we shall always have it in our Power to put a Stop to such Practices

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before they can produce the designed Effect; but, I hope, the removing of two or three Gentlemen from their Posts in the Army, and putting others of as good and as undoubted Characters in their Room, will not be called garbling the Army; and, therefore, I am surprized to hear any late Accidents of this kind taken notice of in this Debate; for while you preserve your Constitution, you must leave to the Crown the absolute Disposal of all Commissions in the Army; and if his Majesty has lately, in a few Instances, made use of this Power, he had certainly good Reasons for what he did: He is no way obliged to give an Account of his Reasons to this House, nor have we any Right to enquire into them. We ought not so much as to take the least notice of such Removes, unless a considerable Number of such had been made, and Men of bad Characters put in the Place of those that had been removed. Then, indeed, it might be proper to think, not only of a Reduction, but of a Dissolution of our Army; but as no such thing can now be complained of, or suspected, as our Army is, I think, the only Security upon which our present Tranquillity depends, and as it is, I think, but barely sufficient for preserving that Tranquillity, therefore I am against our making any Reduction.

The Earl of *Westmoreland*.

My Lords,

Earl of *Westmoreland*.

The only Difference, I find, that has been assigned, and, indeed, the only Difference that can be assigned, between an Army kept up by a perpetual Law, and an Army kept up by an annual Bill, is, that, in the latter Case, we may refuse our Consent to the continuing of the Army, if it should, at any time, appear, that the keeping up of such an Army is unnecessary, or if it should, at any time, appear, that some Attempts have been made to make a bad Use of that Army. Now, my Lords, I think, one of the worst Uses that can be made of an Army, is, to make Gentlemen's Commissions in the Army serve as a Handle for subjecting them to the arbitrary Will of a Court, or favourite Minister; because, if such an Use should ever be made of your Army, it will of Course contribute not a little towards destroying the only Difference that can be assigned, between an Army kept up by a perpetual Law, and an Army kept up by an annual Bill. If an ambitious or guilty Minister should get it signified to all those Gentlemen of the Army, who have the Honour to be Members of either House of Parliament, that if they did not vote according to his Directions, they should be turned out of the Army, and their Subsistence taken from them; if

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he should even make some Examples, in order to shew that he is in earnest; I must ask Gentlemen, if this would not greatly tend towards giving that Minister a Majority, upon which he could depend, in each House of Parliament? If he should go farther; if he should get it signified to all the Officers of the Army, from the Corporal to the General, that they should be disappointed in their Preferment, unless they made use of all their Interest at Elections, in every Corner where they could procure any, in Favour of the Candidate recommended to them by him; and if he should, in this likewise, make some Examples, for shewing that he is in earnest; would not this contribute greatly towards his being always able to procure a Majority of his own Creatures to be chosen Members of the House of Commons? And if this should ever happen to be our Case, I should be glad to know the Difference between an Army kept up at the Pleasure of the Crown, by a perpetual Law, and an Army kept up at the Pleasure of the Crown, by an annual Bill, to be passed in a Parliament, that would never refuse to do any thing the Court or Minister should desire.

I am far from saying, my Lords, that any such Attempts, or any such Examples, have been lately made: I have stated the Case in this Light, only to examine that Doctrine, which has been laid down by the noble Lord that spoke last. The noble Lord was pleased to tell us, that the absolute Disposal of all Commissions in the Army is, by our Constitution, vested in the Crown: That when the King makes any extraordinary Use of this Power, he is not obliged to give his Reasons, nor have we any Right to enquire into them; and that when any Removes are made, they ought not to be so much as mentioned in this House, unless a great Number should be made at a time, and Persons of a bad Character put in the room of those turned out. I am glad his Lordship was pleased to leave us some Power of Controul; but, I shall presently shew, that the Power he has left us, if we had no greater, would be altogether ineffectual for preventing the Mischief I have mentioned. Now, my Lords, I shall grant, that by the present Establishment of our Army, his Majesty has an absolute Power to dispose of all Commissions in the Army, and to turn Gentlemen out of their Commissions, whenever he has a mind. This is, at present, one of the Prerogatives of the Crown; but this, like all other Prerogatives, though it be absolute, it is not arbitrary: It is subject to the Controul of Parliament; and, if any King of this Realm should make a bad Use of this Prerogative, but in one Instance, the Parliament may enquire into it, and may send those that advised it, not only to the Tower, but to Tower-hill. To tell us that we have no Power

Anno 11. Geo. II. to enquire into the Reasons of any Removes, unless a great  
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Number should be made at a time, and Persons of a bad Character put in the room of those turned out, is to tell us, we have no Power at all; for, if a Minister should dare to make a great Number of Removes at a time, he would take care to make such a Number, as should put it out of the Power of Parliament to take notice of any of them; and as to the Character of the Persons put in the room of those turned out, a Man may be of a good Character in private Life, he may even be of a good Character as a Soldier, and yet may not have Resolution enough to risk his Commission, by voting in Parliament, or giving his Interest at Elections, contrary to the Directions, or known Sentiments of a Minister; especially, if he be a Man who has not otherwise a competent Subsistence, according to that Method of living he had led himself into; and still more especially, if it be at a time, when he sees several recent Examples for convincing him that his Commission is at Stake. Therefore, if we had, in this respect, no greater Power than what the noble Lord has been pleased to vouchsafe, the Army might be made a Handle, for procuring to a Minister a continual and certain Majority, in both Houses of Parliament, without its being in the Power of Parliament to prevent, or put a stop to any such Attempts.

In this Country, in all Countries, nay, my Lords, in the most arbitrary Countries, a Gentleman's Commission in the Army is reckoned a Provision for Life; and it is reasonable it should be so; for when a Gentleman, from his Youth, attaches himself to the Business of a Soldier, and for that End neglects every other Business by which he might have got a Livelihood, or advanced himself in the World, the Commission he acquires by his Conduct and Courage, or by his long and faithful Services, perhaps with the Loss of a great deal of his Blood, and even some of his Limbs, ought to be a Provision for Life. It is a Property which ought not, which cannot justly be taken from him, unless he forfeits it by some civil or military Crime. And if to this we add the Title of Purchase, if a Gentleman bestows the Fortune given him by his Parents or Relations, upon the Purchase of a Commission, and makes that Purchase with the Connivance, perhaps in some measure with the Countenance of the Court, surely it is an additional Argument for shewing, that his Commission ought not to be taken from him at the arbitrary Will of a Court, or upon the false and sly Insinuations of a favourite Minister. This would be making an unjust Use of the Prerogative of the Crown, and consequently an Abuse which ought to be enquired into by this House. But if an  
 Officer's

Officer's Commission should be taken from him for not voting Anno 11. Geo. II. in Parliament, or at Elections, according to the Directions he may privately receive from a Minister, or for not shewing a mean and dishonourable Complaisance for a Court-Favourite, it would be an Abuse of Prerogative, that would be not only unjust but dangerous; and therefore, would more highly deserve the Notice of this House.

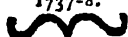
1737-8.

My Lords, it is impossible to suppose, that any Gentleman ever will be turned out of his Commission in the Army without any Reason, secret or revealed; and therefore, when a Gentleman of good Character, both in his civil and military Capacity, is dismissed, without any Reason assigned, the World will suppose it was for Reasons that cannot be owned: They will suppose it was for some of the Reasons I have mentioned: They will from thence conclude, that this House ought to enquire into it; and if we do not, the Reproach will lie at our Door; for which Reason, if we have a due Regard to our own Characters, which must always depend upon the Opinion of the Public, we ought to enquire into every such Removal or Dismission. If it was made upon unjust Grounds, we shall do Justice to the Person injured, and vindicate our own Characters by punishing the Advisers; if it was made upon just Grounds, we shall undeceive the People, and vindicate the Crown.

As to the late Removes that have been made, whether we ought to enquire into all or any of them, is what I shall not take upon me to determine; but, my Lords, whatever may have been the true Reasons, they have raised, I am sure they must raise, a general Suspicion among the People. Some Gentlemen have lately been turned out of their Commissions in the Army, who cannot be so much as suspected of Disaffection, because they have ventured their Lives for the Support of our present Establishment; nor can they be accused of having ever been guilty of the least Fault, or of having been liable to the least Reproach, either in their civil or military Capacity, so far at least as is publicly known; and yet their Commissions in the Army, their military Property, I may call it, has been taken from them, without any Trial, without any Reason assigned. His Majesty had certainly good Reasons for what he did; but, as his Majesty must often hear by means of other People's Ears, and see by means of other People's Eyes, the World will, I am afraid, conclude, that his Majesty's Reasons and those of some of his Ministers were extremely different. They will conclude, that his Majesty's Reasons were founded upon Misrepresentations, which it is impossible for him to discover, but which might be easily discovered, if they were  
freely



Anno 11. Geo. II. freely and impartially enquired into in a Parliamentary  
1737-8. Way.



I know, my Lords, that what I say upon this Occasion will be reported in another Place, not in the Manner I speak it, for if it were, I could not, from any thing I have said, or shall say, incur the least Displeasure; but it will be misrepresented, and the most invidious Turn given to it that can be invented. I have been already served so: What I said upon a certain Occasion last Session, was misrepresented in another Place \*\*\*\*\* This is the Treatment, my Lords, I have already met with; but I despise, I shall always despise such Treatment: While I have the Honour to sit here, I shall upon all Occasions declare my Sentiments decently, but freely, let the Consequence be what it will. It is a Duty I owe to my Country: It is a Duty I owe to my King; and it is the Business of a Soldier to die, rather than to desert, or to neglect his Duty.

To tell us, my Lords, that the Crown, or the Ministers of the Crown; for in this House whatever we say of the Crown, must be supposed to be meant of the Ministers of the Crown; therefore, I say, to tell us that the Ministers of the Crown may dispose of Commissions in the Army, and may turn Gentlemen out of their Commissions, without any effectual Controul from Parliament, is a most dangerous Doctrine. If this were established as an infallible Rule, it is certain that voting either at Elections or in Parliament, contrary to the Directions given by a chief Minister, would always be reckoned, and would be a good Reason for turning a Gentleman out of his Commission: It would be looked on by all Ministers as Mutiny; and I do not know but in some future Session, a Clause might be added to the Bill now before us, for punishing it as such. But without such a Clause, the Doctrine now advanced would be sufficient for making most of the Officers of our Army downright Slaves to the Ministers of the Crown; for to an Officer who has no other Dependence, the Loss of his Commission is worse than the Loss of his Life. Without subjecting the Officers of our Army to the Danger of being turned out of their Commissions, at the arbitrary Will of a Minister, they are, by other Means, already too much exposed to his Resentment. There are many other Methods, by which a Minister may make an Officer suffer, besides that of taking his Commission from him. I have myself, my Lords, experienced many Inconveniencies from my not having had the good Fortune, while I was in the Army, of being in the good

\* The Asterisks denote, that what was said had a Tendency towards being personal, or of a private Nature,

good Graces of a Minister. Even at the Treasury, there are Methods for stopping and retarding the Payment of that Money which is due to an Officer, if he happens to be out of Favour with the chief Man at the Board. Prosecutions and vexatious Suits of several Kinds may be set up against him. Such Things, I say, may be done, and, I say so, because I know it by Experience. I have had \*\*\*\*\*

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If our Army, my Lords, were properly regulated, and both Officer and Soldier rendered as independent of Ministers as other Subjects are, I should perhaps find no Fault with keeping it up, were it more numerous than it is ; but from what I have said, it will appear, that, as long as it continues under its present Regulation, it will always be extremely dangerous for any Officer to incur the Displeasure of a Minister ; and as some late Precedents may perhaps make Officers believe, that their Commissions depend upon a Tenure very different from what they were formerly thought to depend on, therefore, unless some new Regulations are made, I shall always think a numerous Standing Army of the most dangerous Consequence to our Liberties ; for which Reason I shall always be for reducing it as much as possible ; and as no Danger nor Inconvenience can ensue from the Reduction now proposed, I think it ought to be agreed to.

*The Lord Bathurst.*

*My Lords,*

I was a little surprized to hear the least Objection made against the Regularity of any thing said by the noble Lord that spoke last. \* In my Opinion, he neither said, nor attempted to say any thing but what was extremely proper, and what ought to have great Weight in this Debate ; for if any Means have been lately made use of, for making the Officers of our Army subservient to an Administration, both in their civil and military Capacity, it is high Time for us to return to our antient Constitution, which never admitted of a Standing Army's being kept up within this Kingdom in Time of Peace. The noble Lord has, 'tis true, come but lately into this House ; but he came, my Lords, by a very antient Title, which makes his Case very different from those who come by a new Title ; for as those who come by an

\* In both Houses of Parliament, some Rules for speaking are established, and no Member is to be interrupted, unless he attempts to transgress those Rules. If he does, any Member may rise up, and object against his proceeding in that Manner. This was twice the Case with respect to some Things said by the noble Lord ; being interrupted by the Earls of Cholmondeley and Ijla ; but the House allowed him to proceed in what he had begun.

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an old Title, have, from their Infancy, a Prospect of coming here, they may be supposed to have studied our Methods of proceeding from their Infancy; whereas no such Supposition can be made in favour of those who come in by a new Title. Accordingly the noble Lord, ever since he took his Place, and particularly upon this Occasion, has shewn us, that he is perfectly acquainted with our Forms and Methods of Proceeding. He began his Discourse, by representing to us the Danger of making Gentlemen's Commissions in the Army serve as a Handle for subjecting them to the arbitrary Will of a Minister. He shewed us that this would be the Case, if we should allow their Commissions to be made precarious; and if he knew any other Methods that might be used, or that had been used, for rendering the Officers of our Army subservient to an Administration, was there any thing more proper, was there any thing more necessary, to be laid before us on this Occasion? My Lords, what he said upon this Subject was so far from being improper, that, I think, it highly deserves our Consideration: It ought to be enquired into, before we give our Opinion upon the present Question, or at least before we pass the Bill now under our Consideration; for if any Methods have been, or can be, made use of, for making an Officer suffer, on account of what he says in this House, or on account of his not being in the good Graces of a Minister, we ought either to disband our whole Army, or, in this Bill, we ought to make such Regulations as may prevent such Practices for the future.

After having said thus much with respect to Order, I must beg Leave, my Lords, to take Notice of some Things that fell from a noble Lord who spoke last but one. His Lordship was pleased to say, that in every Country there must be a military Force kept, of some Kind or other; that the military Force kept up, ought to be sufficient for defending the People against Invasions and Insurrections; and that this military Force must now, in this Kingdom, always consist in a Standing mercenary Army, because of the Disuse of Arms and military Discipline among the rest of our People. I shall grant, my Lords, that every Country ought to be provided with a military Force, of some Kind or other, sufficient for protecting the Country against foreign Invasions, and the Government against factious or seditious Insurrections; but I am far from thinking it necessary to have that military Force modelled into a mercenary Standing Army; and if it were, I am far from thinking, that Army ought to be so modelled, as to be under a slavish Subjection to the Crown, or to any one Man in the Country.

Suppose, my Lords, it were necessary for us to keep a Standing Army always in Pay : Suppose we could contrive no other Sort of military Force, upon which we could depend, for preserving us from Invasions and Insurrections ; yet I can see no Reason for having that Army under such Regulations, as must keep both Officers and Soldiers under a sort of slavish Submission to the Crown, and consequently to him who happens to be the favourite Minister at the Time ; which will be the certain Consequence, if it should be once established as a Maxim, that Officers may be preferred, and even turned out of their Commission, at the arbitrary Will of a Minister. This gives a Man such an arbitrary Power over the Army, that no Society ought to grant it even in Time of War ; for it was this that enabled several *Roman* Generals to make use of the Armies of their Country for conquering their Country, and at last enabled *Julius Cæsar*, by the same Means, to subdue the Liberties of his Country. But to grant such a Power in Time of Peace, is not only quite unnecessary, but absolutely inconsistent with the Liberties of a free People ; for, as that Army must in some measure be Slaves to the Crown, or rather to the Ministers of the Crown, it is not to be expected that they will long continue to have a Regard for the Liberties of the People ; and if the Army be sufficient for protecting the People, they must be sufficient for subduing and enslaving the People, as soon as their Superiors shall give them the Word of Command.

Our Liberties and Properties, my Lords, depend upon the Laws of our Country, but it is by the military Force of the Country only, that those Laws can be made effectual ; and if ever that military Force should happen to fall under an absolute Dependence upon those who have a Mind to render our Liberties and Properties precarious, our Laws will be of no Significance. Our Liberties and Properties therefore depend, at least, as much upon the Officers of our Army, as they can do upon our Judges. By Experience we know how precarious our Liberties and Properties were, whilst our Judges depended upon the arbitrary Will of Ministers ; can we expect they will be secure, as long as the Officers of our Army are subject to the same sort of mean and slavish Dependence ? By the Act of Settlement we took Care to prevent, for the future, our Judges from being under any such Dependence, by enacting that their Commissions should be *quam diu se bene gesserint*, and that their Salaries should be established ; and if we must for ever hereafter keep up a certain Number of regular Troops, which I shall always call a Standing Army, I think it is absolutely necessary for us to make the same Regulation with respect to the

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Officers of that Army. This, I say, my Lords, is absolutely necessary for the Preservation of our Liberties and Properties; and, if ever we do make such a Regulation, I hope it will be made in such a Manner, as to put it out of the Power of our Judges to weaken it, by any Interpretation they can put upon it; for as they have, by their Interpretation, rendered their own Commissions more precarious than the Law, I am convinced, designed them, we can hardly expect they will shew a greater Regard for the Commissions of the Officers of our Army.

Whilst the Commission of every Officer of our Army, lies at the Mercy of an ambitious Prince or guilty Minister, (and how many Princes can be said not to be ambitious, how many Ministers can be said to be innocent?) I say, my Lords, whilst this is the Case, we are exposed to the Danger of having our Liberties and Properties taken from us, not only against Law, but according to Law; for as there are now, as there always must be a great many Officers in both Houses of Parliament, we can hardly expect that they will all either think or vote freely, when they know, that the Loss of their Commissions must be the Consequence of their thinking, or voting, contrary to the Sentiments of the prime Minister. If this were the Case, I believe few of them would make an Enquiry about the Right or the Wrong of any Question; the only Enquiry would be, whether such a Lord, or such a Member, seemed to approve of it; and the Prince or Minister would always take Care to have a proper Beacon in each House of Parliament, for directing his Officers how to avoid those Shoals, upon which their Commissions might be Ship-wreck'd; by which Means a guilty and rapacious Minister might ride triumphant over our Liberties and Properties, or an ambitious Prince might get such Laws passed, as would render both precarious.

I must, upon this Occasion, my Lords, in a particular Manner, recommend the Case of our Officers to the Consideration of the reverend Bench. None of them, I am sure, would vote against their Conscience for any Consideration; but, I hope, they will consider what Difficulties a reverend Prelate would labour under, if it were in the Power of a Minister to strip him of his Temporalities, in case he should, upon any Occasion, take upon him to differ in Opinion from the Minister, and vote according to his own Conscience. Thank God! the Prelates of our Church are, by the Law as it now stands, secured against being brought under such Difficulties; and if they were not, I am persuaded they would, in such a Case, despise every earthly Consideration; but the Officers of our Army are, and always, must be, but  
Laymen;

Laymen ; and therefore they can never pretend to have such  
 a Contempt for the Vanities of this World.

Anno 11. Geo III

1737-8.

The antient military Force of this Kingdom, my Lords, consisted in the Bravery and Discipline of our Men in general, and the Officers of our Armies were such as neither depended upon the Crown for their Support, nor for their Commands in the Army : They were generally such as held their Commands by their Tenures, or such as were chosen by their respective Counties. The chief Command only belong'd to the King, and even in that, he was always obliged to depute some Person, who was not only a Man of great Fortune, but of a good Character in his Country : for, our Armies, in those Days, would not have submitted to the Command of a Man, who was suspected of being the mere Tool of a Court. It was by such Armies that we defended ourselves against foreign Invasions : It was by such Armies that we defended ourselves against Court-Favourites, and thereby preserved our Liberties. What we now call our Militia, under the Command of the King's Lieutenants, is but a late Invention ; which was never authorized by Parliament till after the Restoration, when every Thing, that could any way be pretended to as a Prerogative of the Crown, was agreed to and confirmed by Parliament.

Our Militia was then, 'tis true, my Lords, put under the absolute Direction of the Crown, but at the same Time it was put under such Regulations, as have made it as useless as it is harmless ; which really seems to have been the Design of some of those who were the Contrivers of that Scheme : They seem to have foreseen, that the Militia they were then about to establish, would be useless, and therefore, the Isles of *Purbeck* and *Wight*, which are the Places most exposed to Invasions, were excepted out of the Act, and continued upon their antient Footing. Whether the establishing our Militia in such a manner, as to render it useless, was contrived by the Court, with a Design to make standing Armies necessary, or if it was contrived by the true Lovers of Liberty, because they could not stem the Torrent, which was then so strong, for granting the King an absolute Power over the Militia, I shall not pretend to determine ; but this I will pretend to foretel, that if the whole military Force we provide for our Defence against Invasions and Insurrections, be put under an absolute Subjection to Court-Favourites, they may for some Time defend us against Invasions and Insurrections, but we cannot expect that they, who are themselves Slaves, will defend our Liberties against the Encroachments that may hereafter be made upon them by Ministers and Court-Favourites. For this Reason, if a standing Army be now the only military Force we can trust to, and therefore a

Anno 17. Geo. II.  
1737-8.

sort of military Force which must always hereafter be kept subsisting, we ought to make it as independent as that military Force was, which for many Ages was the Bulwark of our Liberties and Properties, against domestic as well as foreign Invaders.

But I am far from thinking, my Lords, that it is necessary for us to keep up a standing Army always in Pay, or that we can contrive no military Force, upon which we may depend for preserving us from Invasions and Insurrections. It is the keeping up of such an Army that has made the Disuse of Arms, and Neglect of military Discipline, so general among our People. While you keep up such an Army, it will be the Business of Courtiers, and of all those concerned in the Army, to prevent the People's providing themselves with Arms, or breeding themselves up to military Discipline; whereas, if you disband your Army, or a great Part of it, not only our Courtiers, but all those Gentlemen, who are now concerned in the Army, will be forced to join in such Measures, as may be effectual for encouraging all the Men in the Kingdom, or at least all Freeholders, Farmers, and substantial Merchants and Tradesmen, to provide themselves with Arms, and to breed themselves up to military Discipline. It is, in my Opinion, not at all impossible, to make it as infamous for a Man to be unprovided with Arms, or unacquainted with military Discipline, as it is now for a Gentleman to get the Character of a notorious Coward: Nor would this interrupt or diminish the Labour and Industry of any Man in the Kingdom; for even the most industrious might make themselves thoroughly acquainted with the Use of Arms, and with military Discipline, if they would but spend one half of that Time in military Exercises, which they now throw away in idle and effeminate, or expensive and criminal Diversions; and this Method of passing away our leisure Hours, might easily be introduced even among the Vulgar, if our Courtiers and Men in Authority should once begin to make this their Practice, and that Practice should be followed, as it certainly would, by all the Nobility and Gentry of the Kingdom.

This Custom or Fashion, my Lords, might be regulated, and even enforced, by proper Laws for that Purpose; and by such Methods the whole Militia of the Kingdom might, in a few Years, be made as good Soldiers as any regular mercenary Troops that had never been in Action; for even a regular Army kept in continual Pay, after a Peace of twenty or thirty Years standing, are properly nothing but a well-disciplin'd Militia; and upon the first Rencounter will generally be found inferior to veteran Troops, who have been bred to  
Action,

Actions; and exposed to Danger; but it has always been found, that; after a little Experience, a well-disciplin'd Militia become more resolute and obstinate than mercenary Troops, and for this Reason they have always at last come off Conquerors, as appears from the Histories of all Wars that have been carried on between Militias on one Side, and mercenary Troops on the other. The *Grecians* carried on their Wars against *Persia*, by means of their Militia; and at last beat the numerous mercenary Armies, and subdued the vast Empire of *Persia*: The *Romans* carried on their Wars against *Carthage*, by means of their Militia; and at last beat the mercenary Armies of *Carthage*, and destroyed that rich and populous City. But when the *Romans*, in order to support the arbitrary Power of their Emperors, began to put their whole Trust in mercenary Armies, their military Glory soon began to decline; and at last the *Goths* and *Vandals*, and other northern Nations, by means of their Militia, drove before them the mercenary Armies of *Rome*, and made that proud City submit to the Yoke, which she had, in former Times, by the same means, put upon a great Part of the World.

Anno 11. Geo. II.  
1737-8.

From hence I must conclude, my Lords, that if ever the Militia of one Country proves inferior to the regular mercenary Troops of another, it must proceed from some Neglect of military Discipline and Exercises in the former, and not from the Nature of Things. It is to a Neglect of this Kind, that we ought chiefly to impute the great Success *Hannibal* at first met with in *Italy*; for the best *Roman* Historian takes Notice, that their Affairs were never in a more slothful and effeminate Condition, than they were at the Beginning of the second *Punic* War; and to the same sort of Neglect we ought to impute the Superiority, which regular mercenary Troops are now found to have over the Militia of every Country in *Europe*; because, in all Countries, where regular Troops are kept in continual Pay, the People will neglect to breed themselves up to Arms and military Discipline; and the Government, especially if it be a Monarchy, will industriously propagate that Neglect. Therefore, the Neglect of military Discipline among our People, in this Country, is so far from being an Argument for keeping up our Army, that it is a strong Argument for disbanding it, and for our applying ourselves seriously towards reviving that warlike Spirit among our People in general, which was in former Ages not only our Defence but our Glory. How this is to be done, I shall not now pretend to determine; but several Methods might be contrived for this Purpose. We had formerly a Court of Chivalry, which, as the learned *Cook* observes, had Cogni-  
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sance of all Matters relating to Arms or War. I do not know, but that the reviving of that Court, and putting it under proper Regulations, might contribute to the reviving of that martial Spirit, which formerly prevailed among our People in general: Or, instead of the Bill now before us, which regards only our standing Army, we might have some sort of martial Law to take place at certain Times, or upon certain Occasions, and at those Times, or upon those Occasions, to comprehend all the Men in the Kingdom fit to bear Arms. These, or some such Regulations, might in a short Time make our Militia as good as regular Troops; but without Example, no Laws or Regulations can ever be effectual; and those in Authority will never set an Example, as long as they have such an Army as we have at present to trust to.

If all the Men in the Kingdom, or the greatest Part of those who are fit for Service, were as well disciplin'd, or but near as well disciplined, and as well provided with Arms, as our regular Troops now are, it must be granted, my Lords, that such a kind of military Force would be a better Security against Invasions and Insurrections, as long as our Government preserved the Affections of the People, than any regular Army we can keep up; and the Assistance of our Militia, would then be as effectual for enabling the civil Magistrate to execute any Laws that ought to be made, as the Assistance of regular Troops can be supposed to be. For, even with respect to regular Troops, if their commanding Officer should order them to do what was disagreeable to a great Majority of them, it would probably occasion a Mutiny; the only Difference therefore is, that where Laws are to be executed by the Militia, the Government must take Care to enact no Laws, but such as are agreeable to the Majority of the People; but where the Laws are to be executed by a regular mercenary Army, and the People rendered effeminate and disarmed, for that Purpose, the Government has no Occasion to consider the Inclinations of the People, they consult only the Inclinations of their Army. It is a strange Doctrine in a free Country, my Lords, to say, that because some Laws have been enacted, or some Things have been done, that are disagreeable to the People, therefore a numerous standing Army ought to be kept up, in order to compel the People to submit. This is a Doctrine, my Lords, I shall never approve of: Even as to the drinking of Gin, if it could be no Way prevented but by a standing Army, I should be for leaving the People in Possession of that darling Liquor, rather than attempt to bereave them of it by such Means; for in that Case, an Army that could take Gin from them, could likewise, and probably would, take their Liberties from them  
also.

also. But this is far from being the Case: Take but proper Methods, and every Man in the Kingdom will assist you in preventing the immoderate Use of that, or any other sort of pernicious Liquor. The Morals and Habits of a People, my Lords, are to be corrected by wholesome Advice and good Example, not by severe Precepts and rigorous Punishments. Let the better Sort refrain from the immoderate use of spirituous Liquors, and the meaner sort soon will. But, I am afraid you have taken the contrary Method: You seem to indulge the Rich in Excess, while you punish the Poor for the most moderate Use; like some *Ramish* Priests, who sell Indulgences for the highest Crimes to those that can purchase them, but damn the Poor for the most venial Offences.

If any Laws have been made, my Lords, which, by Experience, we find, cannot be executed, without the Assistance of a numerous standing Army, they must be altered, and other Methods taken for accomplishing that, for which they were intended. Do not let us make the People Slaves, in order to make them sober: Do not let us ruin the People, for the Sake of compelling them to pay their Taxes, or to pay the Turnpike-duties, which, in some Places, I believe, are more necessary for the Support of Luxury, than for the Convenience of the Poor. The keeping up of a standing Army in time of Peace is not only expensive, but has always been deemed inconsistent with Liberty, and of the most dangerous Consequence with respect to our present Establishment. Mr. *Trenchard*, who, I believe, understood the Nature of Government in general, and of our Constitution in particular, as well as any Gentleman ever did, has left it as his Opinion, *That the most likely Way of restoring the Pretender, is maintaining a standing Army to keep him out*: And even that great Man, Lord *Somers*, who is supposed to have wrote against Mr. *Trenchard* upon that occasion, and who was, in King *William's* Time, one of the chief Advocates for a standing Army, declares, *That any Man who would pretend to give a Jealousy of the Nation to the King, and suggest that he could not be safe among them, without he were environ'd with Guards and Troops, ought to be abhorred by every true Englishman, by every Man who loves Liberty and his Country.*

From hence, my Lords, we may judge, what that noble Lord, were he now alive, would think of some of our present Advocates for a standing Army. I am persuaded he would think they had a greater Concern for something else, than they had, either for the Liberties of their Country, or for the Preservation of our present Establishment; for, if he were now alive, I am convinced, he would be now as much against keeping up a standing Army in Time of Peace, as he was for it in King *William's* Time; because, there were then many

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many Arguments for it, which do not now subsist. Our Army was then composed of Men who had all of them ventured their Lives, and many of them lost their Blood, in the Service of their Country, so that we were in some Measure obliged in Gratitude to provide for them. There was then an ambitious and warlike Prince upon the Throne of *France*, one who openly protected and supported the Pretender to our Crown, and one who had often shewn, that neither his Treaties nor Promises were to be depended on. The Peace of *Europe* then visibly, and I may say certainly, depended upon the Life of a Prince, I mean the King of *Spain*, who was, at that Time, both old and infirm. And there was then a most numerous and powerful Party of professed *Jacobites* in the Island.

To all which, my Lords, let me add, that we are now above 30 Millions in Debt more than we were at that Time, which ought to make us more cautious of subjecting the Nation to any needless Expence, than we had reason to be at that Time; and, if we have the least Regard for the Inclinations or Satisfaction of the People, we ought to be more sanguine against keeping up a Standing Army by Consent of Parliament, than any Man had reason to be, when this Custom was first introduced. Some Laws or Regulations may, at first, appear harsh to the People; but if they be either necessary or convenient, the People will, at last, perceive that Necessity or Convenience, and will then become fond of them. In King *William's* Time, some Gentlemen might have supposed, that this would have been the Case, with respect to the parliamentary sort of Army, which was then proposed to be kept up; but no such Thing can now be supposed; for, after an Experience of forty Years, the People, we find, are as much averse to the keeping up of such an Army, as they were at the Beginning; and an Experience of 40 Years, is, I think, sufficient for convincing us, that the People will never become fond of keeping up a Standing Army in Time of Peace: They may be forced to submit to it; but that Force will render them generally dissatisfied, and at last disaffected, which will render the Security of our present Establishment inconsistent with the Security of our Liberties or Constitution; for, no Nation can be said to be free, after a Standing Army has become necessary for keeping the People in Subjection.

The noble Lord was pleased to say, my Lords, that no Army could be called a Standing Army, but an Army kept up by a Standing Law. If this were the Case, there never was, I believe, a Standing Army in the World; I am sure there is no such Army now in *Europe*; but, every one knows, that a certain Body of Men regularly disciplined, and kept in Pay in Time of Peace as well as War, has al-

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ways been called a Standing Army. There is a very remarkable Difference between a Standing Law and a Standing Army. A standing Law, though it was at first made perpetual, though it should be observed for Ages together, yet it cannot say to the Legislature, You shall not repeal me ; but an Army, though it was never designed to be perpetual, though it has been kept up but a small Number of Years, may say to us, You shall not disband me ; if you attempt to do so, I'll turn you out of Doors. We know this by Experience ; and that Experience may convince us, that an annual, parliamentary Check, such as it is pretended we now have, would be of very little Signification against an Army sufficient, and that Army provided with a General resolved, to make the Parliament do whatever he had a Mind. *Oliver Cromwell*, and the Army under his Command, were faithful to that Parliament which established them, as long as the Parliament did nothing to displease them ; but as soon as the Parliament began to think of disbanding them, they immediately, and without any garbling, rebelled against the Parliament, and at last turned it out of Doors. And with a Part of the same Army, we may remember, that General *Monk*, in a few Months, and with but very little garbling, dissolved the Rump Parliament, by whose Authority he at first pretended to act, and restored King *Charles II.*

From these Examples we may conclude, my Lords, that it would be no very difficult Matter for an ambitious and artful Prince, with such a numerous Army as we have at present, to overturn our Constitution, by means of his Army, before the Parliament could interpose that annual Check, in which we are now taught to place so great a Confidence ; and I must observe, that we are in greater Danger from an ambitious Prince or General at the Head of an Army of our own Subjects, than we can be in from an Invasion ; for such an Army, let their Designs be never so bad, will always have a great many Friends amongst, and will meet with great Assistance from, our own People ; whereas if a foreign Army should invade us, or be brought in with a Design to subdue us, our People would join to a Man against such Invaders ; and while they enjoy their Liberties and Properties, they would certainly fight with great Obstinacy and Resolution, in Defence of those Liberties and Properties. But if we should be long saddled with a numerous Standing Army, and the People continually dragooned into Submission, by Means of that Army, they will, at last, look upon themselves as Slaves ; and in that Case, it may be easy for an invading Enemy to conquer us ; for, as the

Ann. II. Geo. II. People will then consider, that they have neither Liberty  
 1737-8. nor Property to lose, they will think of nothing but of preserving their Lives by submitting to the Enemy; nay, they will probably expect an Advantage from any Change of Circumstances, at least, they will think they have got an Opportunity for revenging themselves upon their former Oppressors; and therefore, instead of opposing, they will join the Invader.

When there are so many, and so great Dangers to be apprehended from keeping up a Standing Army in Time of Peace, I must think the noble Lord made a very wrong Application of the Quotation he made from a celebrated *Roman* Author; for, in my Opinion, my Lords, it is applicable only to Ministers and their Favourites: If they are the only Persons that fear nothing from a Standing Army, I am sure, this House and the whole Nation, have the greater Reason to fear. But now, my Lords, suppose there were no Danger to be apprehended from keeping up a numerous Standing Army, and suppose we could contrive no other sort of Military Force, upon which we could depend for our Defence against Invasions or Insurrections; yet it must be granted, that, for the sake of the Expence, no greater Army ought to be kept up than what is necessary; therefore we ought to agree to the Reduction proposed; for, surely, an Army of 12,000 Men is now as sufficient for defending us both against Invasions and Insurrections, as an Army of 7000 was at the End of King *William's* Reign; which was the Number the Army was then reduced to in *England*; and if to that Number we add the regular Troops then kept up in *Scotland*, the whole amounted not to 10,000 Men; yet, notwithstanding the ticklish State of Affairs in *Europe* at that Time, this Number was found so sufficient for protecting the whole Island, that no Invasion or Insurrection was then so much as attempted:

This shews how great a Mistake it is to affirm, that every Reduction of our Army has been followed by an intended Invasion or Insurrection. My Lords, this is so far from being the Case, that every Invasion and Insurrection we have lately had, or been threatened with, evidently appears to have been the Effect of some Discontents, that had been raised among our People, and those have always been occasioned by some extraordinary, though perhaps necessary Measures, that were taken by our Government. The designed Invasion from *Dunkirk* in the Year 1708, proceeded from the Discontents that had been raised in *Scotland*, by the Union, which was, the Year before, concluded between the two Nations. The Insurrection in 1715 proceeded from the

the Discontents that had been raised, by some Measures that were taken upon his late Majesty's Accession; for, I am fully convinced, that, if the Advice of a noble Lord had been taken, who died soon after, and who was well known to have been a sincere and a true Friend to the illustrious Family now upon our Throne; I say, if his Advice had been taken, if healing Measures had been pursued, and former Animosities forgot, upon his late Majesty's Accession, I am convinced, no such thing as an Insurrection would have been so much as attempted; but other Councils prevailed; we know who were the Authors of those Councils; they were certainly the most just and the most necessary, but they raised such Discontents as made it easy for seditious Men to spirit some of our People up to Rebellion. The designed Invasion from *Spain* in 1718, proceeded from the Discontents that were then still reigning among our People: And the Plot, or designed Insurrection, in the Year 1721, proceeded from the Discontents that had been occasioned by the Misfortunes and Mismanagements in the Execution of the *South-Sea Scheme*, in the Year 1720.

Annot. Geo. II.  
1737-8.

Thus it appears, my Lords, that every Invasion and Insurrection we have lately been threatened with, proceeded from the Discontents, that had been raised among the People; and if the keeping up of a greater Number of regular Forces, than is apparently necessary, may raise Discontents among the People, as, I think, it necessarily must, we may conclude, that, with respect to Invasions or Insurrections, instead of being an Antidote, it will always be a Provocative. Now, as an Army of 7000, or, if you please 10,000 Men, has by Experience appeared to be sufficient for preventing Invasions and Insurrections, at a time we were in as great Danger as we can ever be supposed to be in, unless when they are actually threatened, and Preparations making for that Purpose, every impartial Man must conclude, that an Army of 18,000 is a much greater Number than is necessary at present; every Man that judges so, must of Course become discontented; and therefore, not only for the sake of the Expence, but even for the sake of our future Security, against being threatened with any Invasion or Insurrection, we ought to make, at least, the Reduction proposed.

I am, indeed, of Opinion, my Lords, that 12,000 is rather too great a Number. Even such a Number may be of dangerous Consequence to our Liberties, if ever we should happen to have an ambitious and artful Prince upon our Throne. Nay, if our Militia were properly regulated and disciplined, I should be against keeping up half the Num-

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ANNOTT. Geo. II.  
1737-8.

ber ; for General *Mack*, with less than half the Number, overturned the Government then established, and restored King *Charles II.* and in that King's Reign, some People, we know, were of Opinion, that less than half the Number would be sufficient for establishing arbitrary Power, as appears from a famous Scheme, privately, it is said, offered to him, for bridling the Power of Parliament, for loading the Nation with Excises, and for doing a great many other fine things, mentioned at large in that Scheme. But, my Lords, to make too great a Reduction at once, might be attended with many Inconveniences, and perhaps with Danger ; therefore, I think, the noble Lord was right in his Motion : I think a Reduction of 6000 is the greatest we ought to make at once ; but it is not from thence to be inferred, that he, or any one that has seconded his Motion, is of Opinion, that no farther Reduction ought ever to be made ; for I do not think our Constitution and Liberties will ever be absolutely safe, until we return to our ancient Method, of making military Exercises the Diversion and Amusement of all Ranks of Men, and of making it the Custom or Fashion for all our Laymen at least, to breed themselves up to Arms and Military Discipline ; and if we can accomplish this, I believe, it will be granted, we would then have no Occasion for a Standing Army, or for keeping a greater Number of regular Troops in continual Pay, than was necessary for the Grandeur and personal Safety of our King and Royal Family.

The last that spoke in this Debate, was the Lord Chancellor ; in substance thus.

My Lords,

Lord Chancellor.  
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In this Debate, I think, it has been granted on all sides, that when there are great Discontents among the People, we are exposed to the Danger both of Invasions and Insurrections ; and it has likewise been granted, that there are at present great Discontents among the People of this Nation ; therefore it must, I think, be granted, that we are now in great Danger, not only of Insurrections, but of Invasions ; and no Lord who has spoke in this Debate, has pretended to say, that we ought not to keep up an Army, or that we ought to reduce our Army, when we are in real and immediate Danger. But, say some Lords, all the Discontents we now complain of, proceed from your keeping up such an Army : Disband but your Army, say they, or a great Part of it, and the People will be satisfied. This, in my Opinion, my Lords, would be like a Man's throwing away his Arms, in order to be reconciled with his Enemy ; which, I am sure, no Man of Courage or Prudence would do :

do : If a Man has any true Courage, or common Prudence, ANNO II. GEO. II.  
 he will first endeavour at a Reconciliation ; and when he is  
 well assured, that his Enemy is sincerely reconciled with him,  
 he will then lay aside his Arms, because he cannot have an  
 immediate Use for them. 1737-8.

My Lords, if we are certain, that all our present Discontents proceeded from our keeping up an Army, and that all those that now appear discontented, would be satisfied, and would be sincerely reconciled with, and obedient to, our Government for the future, I should readily agree to the Reduction proposed : But the contrary, I think, is manifest. It is not from our keeping up an Army that our present Discontents proceed : It is not with our Government only, but with our whole Legislature, that the meaner sort of People appear dissatisfied. The greatest Discontents that have appeared, the most frequent Riots that have happened, have been occasioned by an Act of the whole Legislature, and one of the best Acts that was ever made, one of the most necessary for preserving both the Health and Morals of the People. Our Discontents and Riots occasioned by the erecting of Turnpikes are of the same Nature : They do not proceed from any Measures taken by the Government only ; but from Measures that have been approved of by the whole Legislature. In both these Cases, the Discontents and Riots that happened, or may happen, must be allowed to proceed from Measures that were proposed by those, who could have nothing in view but the Happiness and Convenience of the People ; and what they proposed have met with the Approbation, not only of our Legislature, but of all the better sort of People in the Kingdom : It is only among the very Dregs of our People, that these Discontents, and this Spirit of mobbing and rioting prevail ; and, if you allow the Dregs of your People to prescribe to, or controul the legislative Authority of the Kingdom, in Opposition to what is approved of by all those of a superior Rank, not only our present Establishment, but Government itself must be at an End : Anarchy and Confusion must ensue, and from that Anarchy, as has been once our Fate already, one of the worst sort of Tyrannies will certainly spring up.

Thus, I think, my Lords, I have shewn, that the Dissatisfaction that now prevails chiefly among our meaner Sort of People, does not proceed from our keeping up a numerous Army ; and none of those Discontents which proceed from Disaffection, Disappointment, Malice, Envy, or Resentment, can, with the least Shadow of Justice, be attributed to our keeping any number of regular Troops in pay.  
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Anno 11. Geo. II.

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These Discontents, 'tis true, may all of them be heighten'd by the Army we keep up at present: But how are they heighten'd, my Lords? The Dissaffected are angry with our Army; because, by means of our Army, our Government is enabled to prevent its being in their Power to overturn our Religion and Constitution, by introducing Popery and Slavery. The Seditious are angry with the Army, because, by means of the Army, our Government is enabled to prevent its being in their Power, to spread War, Bloodshed, and Desolation, over the Face of their Country; and the Loose and Abandoned are angry with our Army, because, by means of our Army, our Government is enabled to prevent its being in their Power, to come easily at those pernicious Liquors, which give a new Spring to all their vicious Appetites, and which make it easy for them to draw multitudes into the same lewd and debauched Course of Life. If our Army, or a great Part of it, were disbanded, can we expect that either of these Sorts of discontented People, would be sincerely reconciled to the present Establishment and Laws of their Country? Can we expect that either of them would become quiet and peaceable Subjects? No, my Lords: They would all think they had got an Opportunity for accomplishing their respective favourite Designs: They would probably join together, as the Triumvirate did at Rome, in endeavouring to destroy every Man of Religion or Virtue in the Country; and what might be the Consequence, I dread to think on.

I shall never therefore, my Lords, be for disbanding or reducing our Army, as long as this Spirit of Disaffection, Sedition, and Dissoluteness, prevails among our People. It is this Spirit that makes the keeping up of our Army necessary. It is this Spirit that now makes a greater Army necessary, than in King *William's* Reign; for though there was then perhaps as much Disaffection as at present, there was little or no Spirit of Sedition among any, and much less was there a Spirit of Dissoluteness and Immorality among the meaner Sort of People. We had then nothing to guard against but the Attempts of the Jacobites; and tho' there was a greater number of open, professed Jacobites than now, yet their Attempts were less dangerous, because they avowed their Principles; whereas, many of our modern Jacobites have learned to disguise themselves, by assuming the Character of Lovers of Liberty, and Admirers of our antient Constitution. They then made their Attacks openly, but now they approach by the Sap, or endeavour to corrupt the Garrison; which is one Reason for shewing, that we now stand in need of a greater Body of well-disciplined Troops, to defend us against

against the Attempts, even of the Jacobites, than we did in King *William's* Time. But there is another, my Lords, which, with me, is still of more Weight : In King *William's* Time, the Violences and Oppressions of the late King *James's* Reign were fresh in every Man's Memory : The Danger to which our Religion, our Liberties, and our Properties; had been exposed, was what every Man then knew by his own Experience. These Things are now generally known by Hear-say only ; and therefore, we cannot expect that our People would now be so unanimous, or so zealous, in opposing the Attempts of the Jacobites, as they would have been in King *William's* Time. Besides, the late King *James* was then alive ; and therefore no Attempts could be made, but in favour of the very Man who had oppressed us ; and who, by his blind Bigottry, had brought us to the Brink of Destruction ; whereas now the Person is changed, and from a new Person, the thoughtless Part of our People may be deluded into the Expectation of a new Sort of Conduct. For this Reason, we cannot now expect that any but the Prudent and Thoughtful, will be unanimous and zealous against all such Attempts ; and they may be overpowered, if they are not supported by a sufficient regular Army.

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But, suppose, my Lords, we had nothing to fear from any Party amongst ourselves, or from any Discontents now subsisting among our own People, yet, I should be far from thinking the present a proper Time for reducing our Army. We are not now, 'tis true, in actual War with any Potentate in *Europe* ; but there is, I think, some Reason to suspect we are upon the Brink of it. As I am one of those who have a good Opinion of the Wisdom of our present Administration, I believe they will avoid a War, if possible ; because it is against the Interest of this Nation to make Conquests, and therefore, against our Interest to enter into a War, if it can be avoided with Honour ; but, the Behaviour of the *Spaniards* towards us has of late been of such a Nature, that we must insist upon Satisfaction ; and though the Court of *Spain* has not yet denied it, yet we know, that a proper Satisfaction is hard to be obtained from any Nation ; and considering the natural Haughtiness of the *Spaniard*, I believe, it will be found to be as hard to obtain a proper Satisfaction from that Nation as from any other ; therefore, though we have still hopes of being able to obtain Redress in a peaceable Way, I think it would be wrong in us to divest ourselves of those, or any of those Means, which are necessary for obtaining it by force of Arms. This, I think, would be our Case, should we agree to the Reduction proposed ; for we could not then, in my Opinion, spare to send one  
Man

Ann. 11. Geo. II. Man of our regular Troops out of the Kingdom; and I believe, every one will grant, that, in case of a War with *Spain*,

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it would be absolutely necessary to send some Land-Forces along with any Squadron sent to infect their Coasts. Without such a Land-Force our Navy could not do them great Prejudice; and therefore, the sending such a Land-Force would be the only effectual Way we could take for procuring a speedy Compliance with our just Demands. A Reduction of our Army would therefore be a vast Disadvantage to us, in case our present Differences with *Spain* should, at last, come to an open Rupture; and if it be our Interest to obtain Redress without coming to an open Rupture, as I think it is, it is rather our Business to augment than diminish our regular Troops; for the Court of *Spain* will certainly be the more pliable, the more they are convinced of our being in a Readiness to revenge the Injuries we have met with.

As to the Regulations our Army is now under, I do not see, my Lords, what Relation they can have to the present Question; and therefore, I do not think it necessary, to take much Notice of what has been said upon that Subject. Only I must observe that ever since we have had any such thing as a regular Army, it has always been under the same Regulations. Under these Regulations, it has procured us Security at Home and Glory abroad; and hitherto we have not found the least Inconvenience from any of these Regulations; which are Circumstances that cannot, I think, afford so much as one good Argument for a Change; but, on the contrary, furnish us with one of the best Arguments can be made use of against admitting any Change. The Officers Commissions must always be, in my Opinion, at the King's absolute Disposal; for it is necessary both for the support of our Government, and for preserving Regularity and Discipline in the Army, to give the King a greater Power over the Officers of our Army than he has over our Judges or Clergy. There are many little Pieces of Oppression and Injustice, which Officers and Soldiers might be guilty of, in their Quarters and otherwise, which it is impossible to punish or provide against, by any human Laws, Civil or Military. There are many little Pieces of Neglect or Misbehaviour in Duty, which it is impossible to prevent by any Law, or to punish even by a Court-Martial. There is no Way of tying Officers down to that Behaviour, Diligence, and Regularity, which is necessary, both for the Quiet of the People, and the Perfection of Military Discipline, but by making the Preservation of their Commissions, as well as their Preferment in the Army, depend upon the whole Tenor of their Conduct and Behaviour; and there is no Way of doing this, but by leaving

ing it entirely in the King's Power to determine, by the Advice of his Generals and superior Officers, what Gentlemen deserve to be preferred, and what Officers ought to be cashier'd.

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I am fully convinced, my Lords, that the giving our Officers a legal Title to their Commissions during Life, or even establishing it as a Rule, that no Officer could be turned out of his Commission but by a Court-Martial, would be the Cause of great Oppression upon the People, and would put an end to all Regularity and Discipline in the Army; and I cannot but admire, that those who, for some Years, have pretended to think an annual Army so dangerous to the Liberties of the People, should ever be for establishing an Army for Life, which would probably be the Case if the Commissions of our Officers were all declared by Law to be for Life. I shall readily grant that this would take off a great deal of their Dependence upon the Crown, and might, perhaps, make it more difficult for a Minister to have any undue Influence, either in Parliament or at Elections; but it would, I am afraid, render our Army so mutinous, and would make it so difficult and tedious to get any Officer dismissed, that the Army would, I believe, in a short Time, begin to prescribe Laws both to the Crown, and to the Parliament.

I must beg Pardon, my Lords, for having said so much upon that Subject, which, I think, no Way relates to the Question now before us. The only Question now under our Consideration is, whether we ought to reduce our Army from 18,000 to 12,000 Men. Upon this Question, as well as in all other Affairs that come before us, every Member ought to determine from his own Knowledge, and by his own Judgment; and, as most of the Members now present, were last Session of Parliament of Opinion, that 18,000 Men were necessary for our Defence last Year, I hope they will, in this Session of Parliament, be of the same Opinion, with respect to the ensuing Year; for, I can see no Pretence for thinking our Danger from Invasions or Insurrections less than it was last Year; and as we have kept up the same Number for several Years past, without being sensible of the least Inconvenience, as we have all along enjoyed, by that Means, a perfect Tranquillity, I cannot be for giving up a Security, which, by Experience we have found to be certain, on account of any pretended Danger, which as yet can be called nothing but imaginary.

At last the Question was put upon the Motion, and carried in the Negative, 35 Contents, 99 not Contents.

The same † Petitions having been presented to the House of Lords against the *Spanish* Depredations, that had been

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Negative put on  
Lord Carteret's  
Motion.

Debate on the  
Petitions against  
the *Spanish* De-  
predations.

† See *Candler's Hist. Ann. 11 Geo. II. 1737-8. P. 96, 101, 102, 103, 104.*

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been presented to the House of Commons, their Lordships likewise took that Affair into their Consideration in a Committee of the whole House, the Lord *Delawar* being Chairman; and after the necessary Examinations were over, the Earl of *Cholmondley* stood up, and spoke to the following Effect:

Earl of *Cholmondley*.

My Lords, your Lordships are, no doubt, fully apprized of the important Reasons for which you are this Day summon'd to attend, and of the Necessity which our Duty and Honour lay us under, to testify on this Occasion our Resentment of the Insults offer'd to the Dignity of the Crown, and the Injuries done to our plunder'd Merchants; I beg Leave therefore, without any Introduction, to enter into an Explanation of such Particulars as, I think, ought to serve as the Foundation of some Resolutions, which I shall take the Liberty to lay before your Lordships, and to which I humbly hope your Lordships will concur.

My Lords, I shall divide what I have to say on this Head into three Parts, each Part relating to one of the said Resolutions; and I hope your Lordships will favour me with your Indulgence. If, after having communicated my Sentiments to your Lordships, any Lord shall think fit to lay before you another Set of Resolutions, or to make Objections, or offer Amendments to mine, I shall cheerfully concur with what the Wisdom of the House shall determine.

That I may proceed with the greater Perspicuity, it will be necessary for me, my Lords, to enter into a Disquisition of the particular Treaties upon which our Right to Navigation in *America* is founded; that we may be able to ascertain the Right upon which we claim a free Commerce in that Part of the World, and have an Opportunity of discovering how unjustifiable these Pretences are, upon which the *Spaniards* have insulted our Merchants, and invaded their Property.

There is no doubt, my Lords, but that the Law of Nations gave the *Spaniards* a Right to a large Part of *America*: Their Title was founded upon their Right of Discovery, prior Possession, and Conquest. But the Ambition of that People push'd them on to claim a Right to all *America* exclusive of other Nations; and this Right, my Lords, they founded upon a Title justly disowned by us, which was, that of a Grant from the Pope. This, my Lords, was the Reason why they opposed the *English* in the Settlements which they made there soon after the Discovery of *America*, and to which we had as good a Right by the Law of Nations, as the *Spaniards* had to their Settlements. And to this it was owing, that, for near a Century after the *Spaniards* had received

ceived this Grant from the Pope, there was a continual War Ann. 11. Geo. II. 1737-8.  
betwixt the *English* and *Spaniards* in *America*, while both  
Powers were in Peace with *Europe*. Nor, my Lords, was

there any Treaty, though we made several during that Period, betwixt us and *Spain*, that ascertained the Right of Commerce and Navigation, or fixed the Bounds of the several Territories possessed by the two Crowns in *America*. The first Treaty, my Lords, that was made for that Effect, was concluded in the 20th Year of the late King *Charles II.* the Articles of which are to be taken distributively, some of them relating to the Trade of *Europe*, and others to that of *America*. But, my Lords, there is no Specification in that Treaty, by which any of its Articles, except the Eighth, can be construed as relating to our Commerce, either in *Europe* or *America*, any other Way than as the Terms of the particular Articles therein contained agree with the Stipulations which regulate the Commerce betwixt the two Crowns in *Europe*. Therefore, my Lords, some of the Articles of that Treaty, such as the Second, the Fourth, and the Seventh, seem chiefly applicable to the Trade betwixt *England* and *Old Spain* in *Europe*: By the last mentioned Article it is stipulated,

“ That the Subjects of the two Crowns shall reciprocally  
“ pass freely and securely by Sea, by Land, and by Rivers,  
“ into the Countries, Confines, Territories, &c. where  
“ Trading and Commerce have hitherto used to be; and  
“ that they shall trade; buy, and sell as freely and securely  
“ as the Inhabitants of the respective Places, whether of their  
“ own Nation, or any other, who are there, or who come  
“ there, or who have Liberty to trade there.”

These Words, my Lords, we must own, are not applicable to the Commerce of *America*, unless we can prove that Commerce and Trading had been us'd betwixt the *English* and the *Spaniards*, and that the Natives of *England* had a Right to settle and to carry on a Commerce in the *Spanish West-Indies*. But, my Lords, though we should grant to the *Spanish* Minister, what is contained in his Answer to our Minister's Memorial; that this and the other Articles, I have mentioned, have no Regard to the Navigation and Commerce in *America*; yet the Regulations to which that Crown is oblig'd to conform by the Articles of the same Treaty, and which are evidently calculated for the Navigation of *America* as well as *Europe*, give us very justifiable Grounds for insisting that the Subjects of his Catholic Majesty acted in direct Violation of that Treaty; because their *Guarda Costas* have arbitrarily attack'd, seized, and plundered the Ships and Cargoes of many of our Merchants. Not contented with this, my Lords, they have proceeded to Violences that are unjustifiable even in a Time of actual War

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between two Nations. This last Proceeding, my Lords, is a Violation of the Law of Nature and Nations, as the former is of the particular Treaties betwixt the two Crowns. To prove this I shall only beg Leave to observe, that by the Treaty I have now mentioned, no Search of our Ships is authorized; at least, no such Search as is practised by the *Spanish Guarda Costas*. For there is but one Article, which is the 14th, in all that Treaty, that can give the least Colour to a Search of any Kind, and in that very Article there is a Prohibition that entirely destroys all their Pretences to such a Search as they insist upon. For, my Lords, it is there expressly stipulated, that no *Guarda Costa*, or Ship of War belonging to *Spain*, shall come within Cannon Shot of an *English* Ship, if she meets the latter at Sea, but shall (give me leave to use the Words of the Treaty) *send their Long-boat or Pinnace to the English Ship with two or three Men on board. to whom the Master or Owner shall shew his Passports and Sea-Letters, whereby not only the Ship's Lading, but the Place to which she belongs, and as well the Master's and Owner's Name, as the Name of the Ship may appear, by which Means the Quality of the Ship and her Master or Owner will be sufficiently known, as also the Commodities she carries, whether they be contraband or not; to the which Passports and Sea-Letters, entire Faith and Credit shall be given.*

Thus, my Lords, we see that, by this Treaty, there is not the least Foundation upon which the *Spaniards* can lay their Claim to a Search in the Manner by them practised. Nay we see, that supposing an *English* Ship had prohibited Goods on board, yet the Master of the *Spanish Guarda Costa* has no Right to rummage his Hold, or to ransack the Vessel; for the Fact of having or not having prohibited Goods on board, is to be taken upon an Inspection of the *English* Master's Passes and Sea-Letters. My Lords, the Authority of these Passports and Sea-Letters, and the Proof of their being genuine, must depend upon the bare Word and Credit of the Master of the *English* Vessel; and after such Passports and Letters are produced and avowed by the Master of the *English* Ship to be genuine, the Ship is to proceed unmolested on her Voyage, because, as your Lordships see, by the latter Part of this Article, *entire Credit and Faith shall be given to such Passports and Letters, when produc'd.* But though by these Letters and Passports it should appear that prohibited Goods are on board on *English* Ship, though it should appear that such a Ship is bound to, or is sailing from a Port at Enmity with *Spain*, and has Goods on board that, in the Sense prescribed by the Articles of the same Treaty, are to be deem'd contraband; yet even these Circumstances

constances can never justify the Confiscation of the whole Ship and Cargo, much less any Abuse of, the Officers and Crew of such a Ship, or forcing them into a long and dismal Captivity; because, by the 15th Article of the same Treaty, " these prohibited Goods only are to be seized and confiscated, and not the other Goods; neither shall the Delinquent incur any other Punishment, except he carry out from the Dominions of Spain any Gold or Silver wrought or unwrought." And the 23d Article, which fixes the Nature of contraband Goods, and to what Sense that Term shall be restrained, expressly says, " that if it shall appear that such Goods are on board an *English* Ship, such Goods only shall be taken out and confiscated; but for this Reason, the Ship and other freed and allowed Commodities which shall be found therein, shall in no ways be either seized or confiscated."

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From the Consideration, my Lords, of these Articles, we see how repugnant the Practice of the *Spaniards*, in searching and confiscating our Ships, is to that Treaty concluded betwixt Spain and us, in the 20th Year of King Charles II. and from the same Consideration it may be fairly inferred, that the Subjects of Great Britain have a Right to navigate in those and all other Seas, without being subject to any other Search, than the Visitation of two or three Persons put on board the Pinnace or Long-Boat of the *Spanish* Ship, who have a Right to know no more about the Ship's Course or her Cargo, than what they can gather from the Papers exhibited by the Captain of the *English* Ship. Their seizing, therefore, or making Prize of any Ships belonging to his Majesty's Subjects, for having on board such of the said Goods as are, in the Sense of the said Treaty, deem'd contraband, is a Violation of the good Understanding that ought to subsist betwixt the two Crowns. Thus much, my Lords, I have said from a Supposition, that the Articles I have last mentioned of this Treaty, have a Relation to the Navigation in *America* as well as to that in *Europe*; though this, my Lords, is a Matter which I believe the *Spaniards* will make great Difficulties of admitting, as appears from the Papers that have past betwixt his Majesty's and the *Spanish* Ministers on that Head, and which lie upon our Table. But there is one Article which effectually destroys any such Pretences of the *Spanish* Ministers. The Eighth Article, my Lords, of the Treaty I have so often mentioned, grants to the Subjects of *England* the same Rights, Privileges, and Immunities of Commerce and Navigation, as were granted to the Subjects of the United Provinces by the Treaty of *Munster*, which was concluded

twenty



Anno 11. Geo. II. twenty Years before the other Treaty which I have men-  
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tioned. So that, my Lords, we have no more to do, even by the Confession of the *Spaniards* themselves, but to have Recourse to the Article of the Treaty of *Munster*, which regulates the Commerce betwixt the Subjects of the United Provinces, and those of *Spain* in *America*. By this Article, my Lords, we shall find that we have as full and ample Right to the Navigation of the *American* Seas, as has yet been insisted on in any of our Memorials, or as has been practised by those Ships, which the *Spaniards* have seized upon and confiscated as lawful Prizes.

But, my Lords, as this Treaty concluded betwixt *Spain* and *England* was found liable to many Altercations, it was thought necessary, by the two Crowns three Years after, to make a more particular Treaty, which should be entirely confined to the Navigation in *America*. This Treaty, my Lords, has for its Title, *A Treaty of Commerce and Navigation for accommodating Differences, and preventing Depredations betwixt the Subjects of Great Britain, and Spain in America*; and though not repugnant to, is far more definitive and explicit than the Treaty concluded three Years before, which I have so often mentioned to your Lordships. And, my Lords, though, by this latter Treaty, we seem to have given up some of the Rights of Commerce, which it would appear we enjoyed when the former Treaty was concluded; yet, still, those Articles of the former Treaty which related in general to our Right of Commerce and Navigation upon those Seas, must be understood to be fully in Force, except in the Cases which are specified by the latter Treaty, and which must be understood as relating to the Navigation in *America*. The most material Difference, my Lords, which is betwixt this latter and the former Treaty, is in the mutual Exclusion which both Crowns have given to their respective Subjects from trading to each other's Ports, Harbours, and Dominions; which Exclusion, my Lords, is contained in the 8th Article of the said Treaty in these Words, *That the Subjects of the two contracting Powers, shall, respectively, forbear and abstain from sailing to, and trafficking in the Ports and Havens which have Fortifications, Castles, or Warehouses, or in other Places possessed by the other Party*. This, my Lords, is the great and material Difference betwixt these two Treaties, and seems to have been concerted by the Ministers of the two contracting Powers, as the only Means of putting an End to the numberless Differences betwixt their respective Subjects, from the Nature of the prohibited Goods, and the indefinite Sense of the former Treaty. But, my Lords, though by this Article we

are

are debarred from sailing and trafficking in the *Spanish* Settlements, and they to the *English*; yet we are not debarred from the common Rights of Navigation and Commerce upon these Seas, we are not debarred from sailing to the Places not possessed by the *Spaniards*; far less are we debarred from sailing betwixt *Great Britain* and any of our Colonies in *America*, or from carrying on a free Commerce there between one of our own Settlements and another. This Article, my Lords, can never be construed as giving to his Catholic Majesty, the Sovereignty of these Seas, exclusive of us and all other Nations. This, my Lords, is a Sovereignty which our Crown has never yet admitted of, as belonging to the Crown of *Spain*, and I dare say never will. Yet, my Lords, without such a Sovereignty, the *Spaniards* can never have the least Pretence for their Depredations. But, to prove to your Lordships that our Crown neither granted such a Sovereignty, nor the Crown of *Spain* insisted upon any such, when this Treaty was made, I shall beg Leave to read the 15th Article of that Treaty.

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“ This Treaty shall no way derogate from any Prehe-  
 “ minence, Right, or Signiory, which either the one or  
 “ the other of the contracting Parties have in the Seas,  
 “ Straits, or fresh Waters of *America*; and that they shall  
 “ have and retain the same in as full and ample a Man-  
 “ ner as of Right ought to belong to them. *But be it*  
 “ *however understood*, that the Freedom of Navigation  
 “ ought not to be interrupted, when there is nothing com-  
 “ mitted contrary to the true Sense and Meaning of this  
 “ Treaty.”

By this Article, my Lords, we see the Rights of Navigation upon these Seas, so far as they were consistent with the Stipulations of the Treaty made three Years before, and so far as they were according to the Sense and Meaning of the Treaty then made; I say, my Lords, we see these Rights are confirmed in as full and explicit a Manner as Words could make them. But, my Lords, there is still a stronger Proof of our Rights of Navigation on these Seas, and of the Injustice of the *Spanish* Pretensions, contained in the 10th Article of this Treaty, which is expressed in these Words:

“ It is also agreed, that, in case the Subjects and Inhabi-  
 “ tants belonging to either of the two Allies, and their  
 “ Ships, whether they be Men of War or Merchant Ships,  
 “ and such as belong to private Persons, should at any Time  
 “ be forced by Storm, Pursuit of Pirates or Enemies, or  
 “ by any other Accident whatsoever, to retire and enter  
 “ into any of the Rivers, Creeks, Bays, Havens, Roads,  
 “ or

Anno II. Geo. II. 1737-8. " or Ports belonging to the other in *America*, in order to  
 " have Protection and Refuge, they shall be received and  
 " treated there with all manner of Humanity and Civility,  
 " and have all the Protection and Assistance of Friends, and  
 " that they shall be allowed to refresh themselves, and be  
 " at Liberty to buy Provisions and other Necessaries, whe-  
 " ther it be for the Support of their Persons, or for repair-  
 " ing their Ships and Conveniency of their Voyage, and  
 " that they shall no manner of way be retarded or hin-  
 " dered to go out of the said Ports or Roads, but they  
 " may do it whenever they have a Mind to do it without any  
 " Lett or Molestation."

Therefore if a Master of an *English* Ship shall, under any frivolous Pretences, continue longer in that Harbour than the Time prescribed by the *Spanish* Governor for his Departure, the said Governor may make lawful Prize of that Ship. This, my Lords, is an Article that never could have been made, if it was the Sense of either of the contracting Powers, that the Ships of either should be absolutely prohibited from navigating in these Seas. By admitting of the Possibility that an *English* Vessel may be obliged to put into a *Spanish* Port, we may with the greatest Justice conclude, that there is nothing in that Treaty which could extend to a Prohibition of the *English* Ships sailing by, and even within Sight of their Settlements, Forts, and Harbours. So that, my Lords, the Prohibition in the eighth Article can only relate to an actual Commerce in their Ports and Harbours, but not to a Prohibition of the *English* Ships sailing from one of our Colonies to another. The only Objection therefore, my Lords, that the *Spaniards* can possibly raise, must be founded, not upon a Right of Navigation, but upon a Right of Possession. They may indeed pretend, that our Claim to some of our Possessions there is ill founded, and inconsistent with their Rights; but, my Lords, in Answer to that, we have a positive Concession from *Spain* of all Lands, Countries, &c. which we possessed at the Time of the Conclusion of that Treaty. The Words of the seventh Article are so express to this Purpose, that I cannot help reading them to your Lordships. Here we see it stipulated, " That the King of *Great Britain*, his Heirs and Successors, " shall have, hold, keep, and always possess in full Right " of Sovereignty, Signiory, Possession, and Propriety, all " the Lands, Countries, Islands, Colonies, and other Pla- " ces, be they what they will, lying and situate in *America*; " which the said King of *Great Britain* and his Subjects " now hold and possess; insomuch that they neither can " nor ought hereafter to be contested or called in Que-  
 " tion,

"tion, upon any Account, or under any Pretence what-  
 "soever."

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These Words, my Lords, I think are sufficient to remove all Objections raised by the *Spaniards*, as to our Possessions in the Province of *Yucatan*, and the Right of cutting Logwood in the Bay of *Campeachy*, unless they can prove that we were not in Possession of any Property in either of these two Places when this Treaty was concluded, which, my Lords, they never can do. I must likewise, by the by, observe, that these Words are sufficient to remove the Scruples which some amongst ourselves have entertained, as to the Confirmation of our Right to the Island of *Jamaica*. It is true, my Lords, that the *Spaniards* at that Time could not be brought to make a positive and a direct Acknowledgment of our Right to that Island, and I think our Ministers did wisely, in not insisting upon it: Because this general Concession in Effect secures it as well to the Nation, as it could have been, had they even granted a direct and express Acknowledgment of our Right of Possession. Besides, my Lords, had we accepted of particular, instead of general, Acknowledgments, every Foot of Land, not specified in the Treaty, had become liable to be disputed. For, my Lords, had we insisted upon such a Security for one of our Possessions, we should thereby have made a tacit Acknowledgment, that all the Possessions we held by virtue of the same Right required the same particular Security, or that the Right itself was invalid. What I have said, my Lords, being in my Opinion sufficient to justify the first Resolution, which I shall take the Liberty to lay before your Lordships, I shall now proceed to another Consideration.

It is evident, my Lords, from the Situation of our Island, and the Genius of our People, that the Glory and Strength of our Country depend upon the Security and Extent of our Navigation; and that an Infringement of the Laws relating to our Commerce, is wounding us in a very tender and sensible Part. Therefore, if the *Spaniards* have committed Infringements of that Kind, I think we cannot do a thing more becoming the Honour and Dignity of this House, than to come to a Resolution on this Head, and to lay it before our Sovereign, who, from the tender Regard his Majesty has always expressed for the Rights of his Subjects, we have no Reason to doubt, will take Care to procure us ample Satisfaction for past, and Security from future Injuries. I hope I have already prov'd to your Lordships, that the Subjects of *Great Britain* have a Right to navigate and trade betwixt any one of our own Settlements and another. I have likewise endeavoured to prove, that the *Spaniards* can have no

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real Claim, from any Treaty betwixt us and them, to justify such a Search as is by them practised. I come now to shew your Lordships, that the Pretences upon which these Searches were made, the Cargoes of our Ships confiscated, together with the Ships themselves, and the *British* Subjects imprisoned and barbarously treated, being unjust and groundless, consequently our Rights to Navigation and Commerce have been unwarrantably infring'd and interrupted. To do this to your Lordships Satisfaction, I need but have Recourse to the Papers that lie upon your Lordships Table; where we shall find that most of the Ships were proceeding on their Voyages in a direct Line, either from *England* to some one or other of our Settlements in *America*, from one of these Settlements to *England*, or from one to another of these Settlements; in all which Cases, my Lords, it was unlawful for the *Spaniards* to give them any Interruption, far less to make them Prizes. The other Ships which were taken in what the *Spaniards* call their Latitude, were forced into it by some of the Causes specified in the first Article of the Treaty concluded in the 23d Year of King *Charles* II. and therefore, my Lords, could with as little Appearance of Justice be confiscated. But there is one Circumstance worthy of the Attention of the Legislature, and which, if admitted to the *Spaniards* as a good Plea, may go far to justify the Excesses and Cruelties they have committed. And that, my Lords, is a Pretence, that their finding on board an *English* Ship any *Spanish* Silver, nay so much as one Piece, gives them a Right to confiscate the Ship wherein it shall be found; and that they have the same Right of Confiscation, if any Goods that are the staple Commodities of the *Spanish* Settlements in *America* are found on board any Vessel. But, my Lords, we ought to be very cautious how we admit of this Claim. We are to consider, that it is next to impossible, that a Ship trading betwixt two Places, that have daily and hourly Intercourse with the *Spanish* Settlements, can avoid having on board some *Spanish* Commodity. There is no Master of a Vessel, be his Caution ever so great with respect to himself, who can answer for his Crew; and by these Means there is no Master of a Ship trading to these Parts, who may not be ruined by the Avarice, or perhaps Ignorance, of the meanest Sailor he has on board. Besides, my Lords, the daily Commerce carried on betwixt the *Spanish* Settlements and ours in *America*, introduces not only *Spanish* Commodities into our Colonies, but even *Spanish* Gold and Silver; it very often happens too, that the Governors of their Settlements send to our Settlements *Spanish* Specie, in order to purchase Provisions and other Necessaries.

ries. And, my Lords, notwithstanding the Prohibition contained in the eighth Article of the Treaty last mentioned, our *South Sea* Company have the Liberty of sending an annual Ship, and of carrying on a lawful Commerce with their Settlements ; which must occasion a very large Circulation of their Commodities and Specie, both in our own Plantations and here at Home.

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Hence it is evident, my Lords, that it is impossible, or next to impossible, for an *English* Ship trading in these Parts to keep so free from *Spanish* Commodities or Specie as (should we admit this Plea of the *Spaniards* to be just) not to be liable to Confiscation. But, says the *Spanish* Court, your Ships are here taken in Latitudes which do not lie in a direct Line, either betwixt *Great Britain* and *America*, or betwixt any one of your Settlements in *America* and another. My Lords, admitting that to be the Case, we still justly contend, that, unless they can prove a Right to these Seas exclusive of us, they can never make just Prize of such Ships ; For as it is impossible to foresee the Contingencies that may oblige a Ship to depart from her direct Course, so it is unjust to make her departing out of that Course a lawful Cause of Confiscation : And it is equally unjust in the *Spaniards* to alledge, that they are the only Judges of the Course which a Ship in such Cases is to hold, and of the Reasons that perhaps may oblige her to alter it. But, my Lords, it appears from the Papers upon your Table, that most, if not all our Ships that have been seized by the *Spaniards*, were actually seized in the direct Courses, either betwixt *Great Britain* and our own Plantations in *America*, or from some one of our own Plantations to another. The Treatment of the Sailors on board our Ships thus seized, was as barbarous and inhuman, as the Pretences for such Seizures were unjust and groundless. The tedious Forms of proceeding in the *Spanish* Courts of Judicature, rendered their Captivity long and dismal ; their want of Knowledge in the Language, and their being deprived at once of all their Papers, took from them the Means of making a proper Defence, and what completed their Misery was, that they were to be tried by a Judge who had an evident Interest in determining against them. And though at length they were acquitted, they must be still considerable Losers by such an Interruption of their Commerce, and so great a Loss of Time. There is another Thing, my Lords, we complain of, and is highly worthy your Lordships Consideration ; and that is, the Pretensions of the *Spaniards* to seize our Ships when any Logwood is found in them. The cutting Logwood in the Bay of *Campeachy*, is a Right which, as we contend, we possess'd when the Treaty made in the 23d Year of King *Charles II.*

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and consequently one of the Rights secured to us in the seventh Article in that Treaty, which I have already read to your Lordships. Accordingly, my Lords, twenty Years ago, when the Case of our Merchants trading to *America* was laid before his late Majesty, his Majesty was pleased to remit this particular Case, and many other Points, to the Consideration of the Lords of Trade and Plantations; who, after the fullest Information they could get, gave it as their Opinion in their Report, 'That the said *American* Treaty (meaning that concluded in the 23d of King *Charles* II.) did establish a Right in the Crown of *Great Britain*, to the *Laguna de Terminos* in the Province of *Yucatan*, those Places at that Time of the Treaty, and for some Years before, being actually in the Possession of the *British* Subjects.' The Board of Trade, my Lords, seems to have had the fuller Authority for what they have reported, from the first Article of the Treaty of Commerce concluded at *Utrecht*; where, after confirming this Right, we read these remarkable Words: *Without prejudice to any Liberty or Power which the Subjects of Great Britain enjoyed, either through Right, Sufferance, or Indulgence.* So that, my Lords, without entering into a Discussion upon what our Right of cutting Logwood in this Bay of *Camteachy* was founded; if it can be proved, as at the Time when this Report was made, it might easily have been done, even by Eye-witnesses, that we were suffered or indulged in cutting Logwood there, we have thereby acquired a Right to the Continuation of that Indulgence or Sufferance. My Lords, this Part of the Difference betwixt *Spain* and us, does not turn so much upon the Right of Navigation, as upon the Right of Possession; but it is a very valuable Possession; for as Logwood is an indispensable Material in many of the common Uses of Life, it is in the Power of any Nation who has the sole Privilege of cutting it, to make their Neighbours pay for it what price they please, and consequently to impose a Tax upon all Nations who deal in that Commodity. Hence, my Lords, we may justly conclude, that the *Spaniards* confiscating Ships for their having Logwood on board, is a Violation both of our Rights of Possession, and of our Rights of Navigation. I shall, my Lords, now proceed to introduce the 3d Resolution which I shall lay before your Lordships, and which relates to the Methods hitherto used by our Government for procuring Satisfaction for the Depredations made upon our Merchants, and for preventing the like for the future, which Applications have hitherto proved ineffectual.

My Lords, there is no Doubt but that the Trade we enjoy with *Spain* and *Portugal* (which last Trade, in case of a Rupture

Rupture with *Spain*, must be greatly interrupted) is very be- Anno 11. Geo. II.  
 neficial to *Great Britain*. For which Reason his Majesty 1737-8.

has omitted nothing that lay within his Royal Endeavours to procure Satisfaction to his injured Subjects for their Losses, so far as they came to his Knowledge, and to prevent the like for the future; and this by the most proper Measures. The *British* Resident at that Court, as appears from Extracts of his Memorials, which lie before your Lordships, has made the strongest and warmest Instances for obtaining the desired End, but has not been yet able to prevail. The King of *Spain* indeed gave Orders, that some of the Ships reclaimed in the Memorials of our Resident at his Court, particularly the Ship *James*, should be restored. But these Orders have either been entirely eluded, by the *Spanish* Governors in *America*, or obeyed in such a Manner, as that a Restitution made to the Sufferers has scarce indemnified them, either for the Expences they have been at in their Solicitations, or for their Loss of Time, or for the Interruption of their Business. But as it would be unjust to impute this Delay to the want of Inclination in the King of *Spain* to give us Satisfaction, our Sovereign, from a Regard to the Interest of our own Merchants, has not thought proper as yet to take any Measures to interrupt the good Understanding betwixt the two Crowns. Therefore, my Lords, I humbly think we cannot give a greater Instance of our Duty to his Majesty, as well as of our Concern for his injured Subjects, than to give him the strongest and most sincere Assurances of a zealous and chearful Concurrence in all such Measures as shall become necessary for the Support of his Majesty's Honour, the Preservation of our Navigation and Commerce, and the common Good of this Kingdom: And therefore I humbly move that we may come to the following Resolutions;

1. Resolved, that the Subjects of the Crown of *Great Britain* have a clear and undoubted Right to navigate in the *American* Seas, to and from any Part of his Majesty's Dominions; and for carrying on such Trade and Commerce as they are justly entitled to in *America*; and likewise to carry all Sorts of Goods and Merchandizes, or Effects, from one Part of his Majesty's Dominions to any other Part thereof; and that no Goods being so carried are, by any Treaty subsisting between the Crowns of *Great Britain* and *Spain*, to be deemed or taken as contraband or prohibited Goods.

2. Resolved, that it appears to this House, that, as well before as since the Execution of the Treaty of *Seville* on the Part of *Great Britain*, divers Ships and Vessels, with their Cargoes belonging to *British* Subjects, have been violently seized and confiscated by the *Spaniards*, upon Pretences al-  
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together unjust and groundless; and that many of the Sailors on Board these Ships have been injuriously and barbarously imprisoned and ill-treated; and that thereby the Liberty of Navigation and Commerce, belonging to his Majesty's Subjects by the Law of Nations, and by virtue of the Treaties subsisting between the Crowns of *Great Britain* and *Spain*, hath been unwarrantably infringed and interrupted, to the great Loss and Damage of our Merchants, and in direct Violation of the said Treaties.

3. Resolved, that it appears to this House, that frequent Applications have been made, on the Part of his Majesty, to the Court of *Spain*, in a manner the most agreeable to Treaties, and to the Peace and Friendship subsisting betwixt the two Crowns, for redressing the notorious Abuses and Grievances before-mentioned, and preventing the like for the future, and for obtaining adequate Satisfaction to his injured Subjects; which, in the Event, have proved entirely fruitless and of no effect.

The Lord *Carteret*.

My Lords,

Lord *Carteret*.

The noble Lord has been pleased to give the House a very accurate, and I believe a very just, Detail of the Treaties upon which our Right to a free Navigation in the *American* Sea is founded. His Lordship has shewed us how far these Rights have been encroached on, and what Methods have been used by his Majesty for procuring Redress; but, my Lords, I must beg leave to observe, that our knowing these Rights is to no Purpose, unless we fall upon a speedy and an effectual Way to secure them; and I humbly conceive, our agreeing to the Resolutions presented to the House by the noble Lord can never answer that End. There is one Point in Dispute, my Lords, betwixt us and the *Spaniards*, which, if adjusted, must either leave us in the quiet and uninterrupted Exercise of Navigation and Commerce, or must leave to *Spain* an absolute and uncontrollable Sovereignty of these Seas. The *Spanish* Court says, *We have a Right to search your Ships*: But *no Search* are the Words that echo from shore to shore of this Island. This, my Lords, is what we ought to insist upon; for without this Concession, all other Concessions from the *Spanish* Court are to no Purpose.

The Treaty commonly called the *American* Treaty, which was concluded in the 22d Year of King *Charles* II. was a Treaty separate from the Treaty concluded three Years before; nor is there one Word of it that has a Retrospect to that Treaty; and, my Lords, the confounding these two Treaties together is the Reason why the *Spanish* Ministers and

and ours seem to be equally in the dark, with regard to the Anno 17. Geo. II. Affair in question. But, my Lords, we need only look into the eighth Article of that Treaty which the noble Lord has been pleased to read, and we shall find that there can be no such thing as contraband Goods betwixt us and the *Spaniards*; because there can be no such thing as Commerce carried on betwixt our Subjects and theirs, and consequently there cannot be the least Shadow of a Pretence to a Search on that Account; and when that Pretence is cut off, all the Subject of Difference betwixt us and that Nation is done away; for it is impossible for us to have any other Difference. My Lords, this is a Point so plain, that it is to me amazing that our Ministers at the *Spanish* Court should omit it in their Memorials, that the *Spaniards* themselves should overlook it, and that our Merchants in the many Applications they have made, to the King, to the Council, and to Parliament, have never once mentioned it. By the first of the two Treaties made in the 20th and 23d of the Reign of *Charles II.* the Regulations of Commerce betwixt us and *Spain*, being principally intended to settle the Trade betwixt *Old Spain* and *England*, the *Spaniards* no doubt have a Right to search any Ship which they find upon their Coasts, and which they suspect of carrying prohibited Goods, because every Nation has an undoubted Right to lay what Prohibitions they please upon the Commodities produced by their own Country, and likewise on the Commodities imported to their own Country, unless by some particular Stipulations with other Nations they are bound up from making such Prohibition. They are likewise at liberty to prohibit such and such Goods from being imported or exported on such and such Bottoms. But, my Lords, these Prohibitions of particular Commodities always pre-suppose that it is lawful for this, or any other Nation, to trade with that Nation in other Commodities. For this Reason, my Lords, every Nation has an undoubted Right to prevent every Infringement in this Regulation of her Commerce, and consequently to search all suspected Ships whom she shall find on her Coasts. But, my Lords, when two Nations are at Peace together, and amicably agree that they shall have no Trade, no Intercourse, no Commerce with one another, to suppose that either of these Nations hath a Right to search the Ships of the other, is to suppose what is inconsistent with common Sense. For, from whence have you this Right? From any particular Stipulation betwixt you and us? No: No such thing can be pretended. Does it arise from a Suspicion that we break in upon the Laws of Commerce regulated among yourselves? No, that would be absurd; because we have

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no access to your Country, and therefore can never, either import or export any Commodity that is prohibited by your Laws. Again, does this Right to search our Ships obtain from Custom or Sufferance? That we deny; nor can you prove that you ever enjoyed any such Privilege till you usurped it of late; and since you did usurp it, we have continually complain'd. At least, my Lords, the trading Part of our Nation has complain'd of it as an Innovation and an Encroachment upon the Freedom of Navigation and Commerce: And, my Lords, if this is a Point hitherto undetermined by any public Act betwixt the *Spaniards* and us, this is the proper Time for settling it; and I dare say, the thing is so plain and so reasonable in itself, if our Minister at the *Spanish* Court shall represent it in the Light in which I have already view'd it, the King of *Spain* will be of Opinion that we have fallen upon the only and the true Method of preserving a good Understanding betwixt the two Crowns. For, give me leave to say it, our insisting that no Search, upon any Pretence whatsoever, be made, can never do any Prejudice to the Interests of the *Spanish* Court, it can never break in upon the Regulations of their Commerce, it can never violate any Treaty subsisting between them and us, because we still allow the 8th Article, which is of the greatest Importance, to be in full Force; and our coming to a Resolution on this Head is only saying, in other Words: 'We do not pretend to disturb you (the *Spaniards*) in putting these Regulations in Force, which you have a Right to make with every Nation with whom you trade: Therefore we are willing you should enjoy all the Advantages of the Treaty made in the 19th Year of King *Charles II.* we are willing you shall enjoy the Advantages of the Treaty concluded three Years after; we are willing you should enjoy a Commerce with your own Settlements in *America*, exclusive of us and all other Nations. But because we are willing you should enjoy all these Advantages, we must take Care that they are not used to our Detriment; we must take Care that the trading Part of our Subjects be secured in the Privileges to which they are entitled by Treaties; and we must take Care not to suffer so material a Point to remain longer undetermined, especially as you seem to claim, as a Right, what is founded neither upon common Reason, the Laws of Nations, nor the particular Treaties subsisting between the two Crowns.' But, says the Court of *Spain*, (for, my Lords, I would not leave one Shadow of an Objection which they could raise, unanswer'd,) How shall we prevent your carrying on a clandestine Trade with our Settlements? Or how can we discover when such a Trade

Trade is carried on or not, but by searching your Ships, and satisfying ourselves if any of our Commodities are on board? 'Yes, answer we, you may; seize them in your Harbours, seize them in your Ports; seize them in your Towns and Countries where they trade; if you seize them there, the Grounds of your Confiscation are good: For their very being there, unless for the Reasons mentioned in the 10th Article, though they did not trade to the Value of one Shilling, makes their Ships and Cargoes your lawful Prize. Our Crown never pretended to protect Smugglers, and by agreeing to the 8th Article of this Treaty, it in Effect impowers you to do yourselves Justice upon all who violate it. But we never can pretend to account for what our private Subjects may do to your Prejudice; it is your Affair to look to that; only take Care of it at a proper Time, in a proper Way, and in a proper Place; and don't make the Innocent suffer for the Guilty: Don't, because, perhaps, you yourselves have suffered by the Practice of a few Smugglers of our Nation, make the fair Trader liable for these Practices, nor usurp a Sovereignty of these Seas exclusive of us.' Thus, my Lords, we answer all the Objections which the *Spaniards* can make on this Head, and yet grant them all they can have the least Shadow to claim, either by the Law of Nations or particular Treaties. Let us therefore, my Lords, make such a Resolution, let the *Spaniards* see that we intend to do both them and ourselves Justice; and in that Case, my Lords, I dare answer for it, we shall have no Occasion for entering into a War: We shall have no Occasion for prolonging or multiplying Treaties; we shall have no Occasion to put the Nation to the Expence of sending over Commissioners for regulating our Affairs of Commerce; but if we do not come to such a Resolution, we may, indeed, puzzle out a War; yet when that War is over, and when we have run two or three Millions more into Debt, unless we make this the main Point, we shall find ourselves as far from our Purpose as ever.

My Lords, the *American Treaty* is a Treaty which we did not grant to the *Spaniards*, but after many Solicitations, and for very valuable Considerations; it was granted, my Lords, in Discharge of two Millions of just Debt, at that Time due by the Crown of *England* to that of *Spain*; and I could heartily wish that we could defray two Millions of our National Debt at present by granting such another Treaty. It was look'd upon at that Time, my Lords, by the *Spaniards*, as the only Means of securing to themselves the valuable Advantages they reap from their Possessions in *America*. They were therefore very well pleas'd, and, I believe very thankful for the Concessions

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we had made ; nor do we find one Instance, my Lords, during the Reigns of King *Charles II.* King *James II.* King *William III.* or Queen *Anne*, of any one Ship being seized on these Seas on Pretence of having prohibited Goods on board in time of Peace. So that, my Lords, this Claim of the *Spaniards* is of a very late Date, and very probably trump'd up to serve the Interests of the Owners of the *Guarda Costas*, who may have imposed on the Court of *Spain* by Misrepresentations of Facts. For, give me Leave to observe, my Lords, that these *Guarda Costas* do not belong immediately to the Crown of *Spain* : No ; sometimes they are fitted out by the Merchants of *Spain*, sometimes by the *Spanish* Inhabitants of *America*, and sometimes by the Governors of their Settlements there. Such a Variety of Interests combining to support them, it is no Wonder, my Lords, if they have a strong Interest at the *Spanish* Court, whose Ministers may be misled either by Interest or Ignorance to protect them. But if we should put it fairly to them : ' Are you resolved to search every Ship you meet with in these Seas ? Are you resolved to confiscate every Ship which shall have on board any of your Specie or Commodities ? ' If they shall answer, No ; the Matter is so far adjusted betwixt us. But then, my Lords, it may be proper to add (and it is, to be sure, a natural Consequence of this Resolution) ' If you can claim no just Right, if it is founded neither upon Treaties, nor allowed by Practice, and if it was not the Intention of the contracting Powers when this Treaty was made, that such a Right should be inferred from any of its Articles ; by what Authority, pray, have you exercised it so long ? How are our Subjects to be indemnified for the many Depredations and Violences they have suffered ? Or how is the Law of Nations to be satisfied for these Proceedings ? If they were not authorized by your Court, it must give the Offender up to Justice, and our Merchants must be indemnified out of the Effects of the Delinquents. But if you cannot deny that they were protected by your Court, it becomes a national Concern, and your Crown must indemnify us, let it seek its Relief elsewhere.' This, my Lords, is the common Way of reasoning amongst Men in Matters of private Property ; I think it has always been a just Way of reasoning, and I hope that it never will be neglected by Princes in Matters of public Concern.

If the *Spaniards*, my Lords, should insist upon a Right of searching all Ships in general ; if, contrary to our Expectations, they should pay no Regard to the Law of Nations or their own Faith, yet still we shall gain this Advantage, that we shall make it the common Cause of all the Nations in

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*Europe* who are possessed of one Foot of Ground in *America*. Anno 11. Geo II.

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When *France* sees them make such a wild and unwarrantable Claim, she will think it Time for her to strike in ; she will think that what is the Case of *Britain* to-day, may be that of *France* to-morrow. The *French*, my Lords, as a People who subsist by Trade, and who have Reason to be jealous of every Innovation that is introduced in it, will consider our Cause as their own, and will look upon the Success of this Affair as what may one Day determine the Fate of their own Commerce, both to their western and eastern Settlements. For, my Lords, give me Leave to observe, that this is a Point that does not affect this particular Branch of Trade only, but it affects all the Trade which is carried on betwixt any Nation in *Europe* and their foreign Settlements. For Instance, my Lords, if we are more powerful in the *East-Indies* than the *Dutch*, or the *French*, or any other *European* People who have Settlements there, have we not as good a Reason to insist upon a Search of their Ships, lest they should carry on a prohibited Trade with our Factories there ? Have we not as good a Right to make ourselves Judges what Courses their Ships shall hold on these Seas ? Have we not as good a Right to confiscate their Ships and Cargoes, as the *Spaniards* have to treat us in the same manner in *America* ? My Lords, I should be glad to hear any Argument that could be advanced against such a Practice in one Part of the World, that does not hold equally good in another Part. But, my Lords, let us suppose that no such Claim is made by any other Nation, in any other Place in the World, but by the *Spaniards* in *America*, what must the Consequence of this Demand of theirs be, with regard to the Trade carried on there by other Nations of *Europe* ? We all know that the Consumption of every People must be supplied, either by the Product and Manufactures of their own Country, or by the Commodities which they purchase from their Neighbours. But, my Lords, when any of their Neighbours are possess'd of a Commodity, which they think they could not be possess'd of otherwise than by an illicit Trade with their Settlements, is that a just Reason for searching, and arbitrarily confiscating that Neighbour's Ship ? My Lords, this would set all the Nations of *Europe* by the Ears with one another. For no doubt the *Dutch*, the *French*, the *Spaniards* themselves living in *America*, are obliged to trade with one another there to supply themselves with the common Necessaries of Life ; and it is a certain Fact, that there is nothing more ordinary than for the *Spanish* Governors in *America* to permit, to protect, and to pay *British* Ships for importing into their Settlements those Commodities that enter into the common Necessaries of Life, without which

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their

Anno 11. Geo. II. 1737-8. their Inhabitants must starve. For such is the Genius of the

*Spaniards in America*, so much are they over-run with Luxury, Ease, and Pride, supported by a great Affluence of Money, that they cannot apply themselves to the ordinary Arts of Life, as other People do, and for that Reason they must purchase Conveniencies and Necessaries with Money, or they must want them. So that, my Lords, in Effect, this Prohibition of Trade, if strictly and literally enforced, must either prove the Ruin of the Inhabitants in these Settlements, or produce a general Revolt against the Prince, who can be the only Gainer by it; as it tends to prevent the Exportation of Specie into *Europe* any other Way than by his Register-Ships, and consequently secures to him an Indulto of eleven or twelve *per Cent.* for all the Specie thus imported. Were this Claim of a Right to search in the open Seas, as asserted by *Spain*, allowed by other Nations to be just, I should be glad to know by what Means the *Dutch* could import one grain of Sugar from *America* to *Holland*. A Ship sails from their Island of *St. Eustache*; a *French Guarda Costa* attacks and boards her; *From whence did you sail?* From *St. Eustache*. *Whither are you bound?* To *Holland*. *With what are you loaded?* Sugar. But, says the *Frenchman*, "*St. Eustache* does not produce one Hoghead of Sugar for its own Use; far less is it able to export any: You must therefore have had it from *Martinico*, one of our Islands. You are therefore concerned in an illicit Trade, and as such we seize and confiscate your Ship." This Way of reasoning, my Lords, is just as good in the Mouth of a *Frenchman* to a *Dutchman*, as in that of a *Spaniard* to an *Englishman*. Does not every Man, who has the least Concern in Commerce, know what vast Quantities of *Spanish* Gold and Silver there are in *England*? And if a Master of a Vessel, or a Passenger, or a Merchant, or a Sailor, should by Chance carry from *England* one single Piece of that Specie, if we allow this Claim of the *Spaniards* to be good, he himself, his Crew, his Ship, and his Cargo, may be lawfully seized, the one to be confiscated, and the other imprisoned, though not one Person on board had ever set his Foot on *American* Ground, or had ever been within sight of its Shores.

The same Thing, my Lords, may be said with regard to Ships trading from one of our own Colonies to another. A Ship sails from *England* to *New York*, she disposes of her Cargo there in a fair Way of Trade, and receives Payment for a great Part of it in *Spanish* Money: From *New York* she coasts along Southward to *Pennsylvania*, *Virginia*, and *Carolina*, all the Way only touching at our own Settlements: Why, my Lords, it is possible, before she comes the Length of

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of *Jamaica*, that most, nay all her Cargo, may be made up of *Spanish* Money or Commodities, and yet she all this Time in a fair and lawful Trade; and to make such a Ship confiscable, I humbly conceive would be the Ruin of our Navigation and Commerce in these Seas.

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There is, my Lords, a very remarkable, and I think a very shuffling Expression in the Memorial delivered by the *Spanish* Minister to our Envoy at that Court. *The British Ships*, says he, *are subject to Confiscation, if it appears that they have designedly changed their Course to make any of the Spanish Coasts*. My Lords, this Expression betrays a downright Ignorance of Commerce and maritime Affairs, and is a Proof of what I have advanced before, that the *Spanish* Ministers are grossly imposed upon themselves, or it proves, that they want to impose upon us. For, almost in the same Sentence, this very Minister allows that we have a Right to sail from any one of our own Settlements to another: Now every common Tar can tell that it is impossible for us to do that, without being obliged to make the *Spanish* Coasts, and to come within sight of their Land, be the Caution of the Master of the Ship never so great. In sailing from *New England*, don't we take the Windward Passage? Thereby we have the *Spanish* Island of *Cuba* in sight on the one Side, and the *French* Part of the Island of *Hispaniola* on the other. In sailing from *Barbadoes* to *Jamaica*, if we sail in a direct Line, we are obliged to make the Coasts of the *Spanish* Part of the same Island; and in sailing from *Jamaica* to any of our Northern Colonies in *America*, we shall be obliged to sail either upon their Coasts, or in what they call their Latitude, for a great Part of the Voyage. Besides, my Lords, those who are acquainted in those Affairs tell us, that the Navigation on these Seas is so uncertain, that it is impossible for the most expert Sailor that ever was, to be sure of his Course without making Land: Because, before they see Land, they do not know what Tides and what Winds they are to meet with. In certain Latitudes, my Lords, the Tides are so strong that, notwithstanding all the Ship's Crew can do, their Ship is borne by its Violence within sight of Land of the *Spanish* Coasts; nay, close to their very Shores. How barbarous therefore, my Lords, would it be in the *Spaniards* to seize and confiscate a Ship in such Circumstances! And how weak would it be in us to allow them any such Right! Yet, my Lords, unless we obtain the Concession from them of *no Search, be the Grounds and Pretensions what they will*, we, in Effect, give them such a Right: Because if we admit of one Exception, of one Restriction on their Parts, there is not a Ship of ours that trades lawfully on these Seas, but what must necessarily



Ann. II. Geo. II. necessarily fall within such Exceptions, and under such Restrictions, as will make her a lawful Prize. Besides, my

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Lords, an absolute Concession of this Point from the *Spaniards* takes away Chicane, it takes away all Altercations, it takes away all Grounds of Dispute betwixt us and them, about Latitude, Possessions, prohibited Goods, and all that. Thereby, my Lords, we do Justice to them, we do Justice to ourselves, we leave them in full Possession of all the Advantages to which they are entitled by Treaty; we leave them in Possession of the exclusive Right of trading to their own Settlements, so far as it is consistent with the Treaty for *Negroes*; we do not deny their Right to seize our Ships whenever found trading in their Ports and Harbours; and this, my Lords, is all that we can prudently grant, or they justly demand.

My Lords, I have waved touching on the Right we have to cut Logwood in the Bay of *Campeachy*, and other Claims we have on the Continent of *America*; because our asserting these Claims to be just, and entering into a Discussion of our Rights, is not the Business now before us. I shall only observe, that if these Rights are well founded (as I believe no *Englishman* nor *Spaniard* either, will deny they are,) the Reasons I have already advanced against the Pretences of *Spain*, will hold much stronger with regard to Ships sailing from any one of our Colonies to these Places, than with regard to Ships sailing from any one of our own Colonies to another: Because these Places lie in the very Heart of the *Spanish* Settlements, and in the very Bosom of the Bay of *Mexico*; and unless we come to the Resolution I have insisted on, it would be much better for us to give them up, than to keep them.

I shall trouble your Lordships no farther; only, I shall observe, that what I propose is the most likely Way to prevent the Encroachments of the *Spaniards*, not only upon us, but upon other Nations of *Europe*. There is not a *Dutch* Skipper who won't tell us, that *no Search* is the only Remedy to be applied in this Case; *no Search*, my Lords, is a Cry that runs from the Sailor to the Merchant, from the Merchant to the Parliament, and from Parliament, my Lords, it ought to reach the Throne. Wherefore, my Lords, I humbly move that the following Words may be added to the noble Lord's first Resolution:

" And that the searching of such Ships on the open Seas, under Pretence of their carrying contraband or prohibited Goods, is a Violation and Infraction of the Law of Nations, and of the Treaties subsisting betwixt the two Crowns."

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The Lord Chancellor sitting at some Distance from the Lord *Carteret*, thought the latter had moved that the Words of the Amendment should be inserted, instead of the latter Part of the Resolution proposed by the Earl of *Chalmersley*, viz. "and that no Goods so carried are, by any Treaty subsisting between the Crowns of Great Britain, and Spain, to be deemed or taken as contraband or prohibited Good. Upon which he arose and said, he thought that if they substituted the latter Words in place of the former, they should make a very bad Exchange; because it would look as if they designed to impose arbitrary Terms upon the Spaniards without assigning any Reason: "that their resolving that no Goods carried to and from any part of his Majesty's Dominions," sufficiently implied, that the Spaniards had no Right to search our Ships, and therefore was a much more proper Resolution for them to come to, than if they should admit of the noble Lord's Amendment, which would seem to imply, that, though they did carry on an illicit Trade, yet a Search was unlawful.

Annot. Geo. II.

1737-8.

Lord Chancellor.

The Lord *Carteret*.

My Lords,

It was never my Intention that any Part of the Resolution laid before this House, by the noble Lord who spoke first, should be omitted; but I am of Opinion, that the Addition I propose is a necessary Amendment to that Resolution, and that it is becoming the Dignity and Authority of this House to declare, in the most express Terms, not only the Rights which we ourselves have, but likewise what Rights the Spaniards have usurp'd; and to shew them, that, however they have either designedly or ignorantly mistaken the Sense of the Treaties subsisting betwixt us, yet we are resolved to assert our just Claims, and not to leave them the least Shadow or Pretence to a Search for the future.

Lord Carteret.

The Lord Chancellor.

My Lords,

I am as sensible of the many Insults and Injuries we have received from the Spaniards, and should be as willing to come into those Measures that may be proper to bring them to a Sense of the Wrongs they have done us, as any Lord in this House. But, my Lords, I think if we come to a Resolution on that Head, it ought to be a Resolution rather in general than in particular Terms; it ought to be a Resolution that we can have no Reason afterwards to depart from, and it ought to be a Resolution our Adherence to which can never afterwards embroil us with any of our Neighbours. The Amendment which the noble Lord has offered, tho' I extremely approve of his Lordship's Zeal, may, I

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Anno 11. Geo. II. am afraid, be attended with some of these Inconveniencies ;  
 1737-8. because I humbly conceive that there are certain Cases where-  
 in any Nation, though at Peace with another, may, by the  
 Law of Nations, enter and search the Ships of the other ;  
 nor can the Nation to which the Ship so searched belongs,  
 deem such a Search a Violation either of the Law of Nations,  
 or of particular Treaties in force.

I think, my Lords, it never was disputed, but that, by  
 the Law of Nations, the Ships of one People at Peace  
 with another might be searched, in case that other People  
 was carrying Arms, or Provisions of War to a Nation then  
 at War with that other Nation. Now, my Lords, I am  
 afraid that our declaring the searching of all Ships belong-  
 ing to *Great Britain*, to be an Infraction and Violation of  
 the Treaty subsisting betwixt the *Spaniards* and us, will be  
 very justly looked upon by the Court of *Spain*, as precluding  
 them of the Rights of a Search, to which they are entitled  
 by the Law of Nations, and may produce a Misunderstand-  
 ing betwixt us, which we would all heartily wish to avoid,  
 and could not be attended with very honourable Circum-  
 stances on our Part: However, my Lords, I am very far  
 from proposing any thing that could in the least damp that  
 becoming Ardour, which the Nation in general has shewed  
 upon this Occasion, to assert her Rights, and to revenge  
 her Injuries. Nay, I should rather chuse to err on the  
 other side ; and if your Lordships shall think that the Re-  
 solution as amended by the noble Lord who spoke last, is  
 most proper to attain the desired Ends of Satisfaction for  
 past, and Security from future Injuries, I am sure, I shall  
 be far from objecting to the noble Lord's Amendment ; all  
 that I suggest is, that if there are two Methods in which we  
 can form our Resolution, both equally effectual, and equal-  
 ly answering the great Purpose of our Meeting, we ought  
 to chuse that Method which is subject to fewest Inconveni-  
 encies and Objections.

The Lord *Carteret*.

My Lords,

The Lord *Carteret*.  
*ret.*

I should be sorry if the Amendment I have proposed  
 should be attended with the Inconveniencies and Conse-  
 quences which the noble Lord who spoke last seems to ap-  
 prehend, and I am obliged to the noble Lord, for giving  
 me this Opportunity to shew the House, that if the Incon-  
 venience his Lordship has suggested is the only one with  
 which the proposed Amendment can be attended, it is not  
 liable to any Objection. The noble Lord is apprehensive  
 that the Resolution, as amended, seems to take away from  
 the *Spaniards* some of those Rights to which they are en-  
 titled.

titled by the Law of Nations. And let me add, my Lords, Anno 11. Geo. II. 1737-8.

that if his Lordship's Apprehensions are just, it takes from them the Privileges to which they are entitled by particular Treaties. But, my Lords, if the noble Lord had been pleased to consider the Words of the Amendment a little more attentively, he must have found that the Infraction and Violation were to be committed by *searching* such Ships: What Ships? Why, my Lords, the Ships that are navigating in the *American* Seas, and carrying on a Commerce to and from any Part of his Majesty's Dominions. Now, my Lords, *such* Ships can never have any contraband Goods on board, unless we are at War with the *Spaniards*; and in that Case, my Lords, they will seize them, whatever be their Cargo. Contraband Goods, my Lords, are only to be understood of Provisions of War and Arms, that are carried from one Nation to another, who is at War with the Nation that intercepts the Ship having such Goods on board. Therefore, my Lords, the Resolution can never affect such a Case, because the Words of the Amendment only extend to those Ships, which are trading to or from his Majesty's Dominions. But, my Lords, there is not an Expression in the whole Resolution, as it stands amended, which can imply, that, in case one of our Ships should be sailing to or from any Part of the Dominions of *France*, to or from any Part of the *Dutch* Dominions, to or from any Part of the *Danish* Dominions, the *Spaniards* have no Right to search such a Ship when she comes in their Way, while any of these Nations are at War with *Spain*. No, my Lords, our agreeing to the proposed Amendment can never affect any of these Cases, and therefore preserves to the *Spaniards* all the Rights to which they are entitled by the Law of Nations, and the Treaties subsisting betwixt the two Crowns.

The Question going to be put, if the whole first Resolution, as it stood amended, should be agreed to, the Earl of *Cholmondeley* spoke to the following Purpose.

My Lords,

As the noble Lord seems to think, that the Amendment he has proposed will be a very great Improvement upon the first Resolution, which I had the Honour to lay before the House; and as I am of Opinion that it can do it no Harm, I am, in the main, very willing to concur with the Resolution as amended by the noble Lord. But, I hope I may be pardon'd, if I object against one Expression in the Amendment; the Expression, my Lords, is, that the searching our Ships is *against the Law of Nations*. The noble Lord himself, I think, seem'd to admit that the *Guarda Costas*, whom we so much and with so great Reason com-

1737-8.

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Anno 11. Geo. II.  
1737-8.

plain of, and who were the Authors of all the Infults committed upon our Navigation there, are not Ships belonging to the Crown of *Spain*. Therefore, my Lords, the Violences they commit must not be imputed to his Catholic Majesty; and it would be a very exceptionable Way for us to express ourselves, should we say that the Actions of a few private Men, who are no better than Pirates, can violate the Law of Nations. If, indeed, they acted by Orders from the Court of *Spain*, or if the *Spanish* Court should say expressly that she will protect and encourage them in searching our Ships, who are in a fair Trade betwixt one Part of his *Britannic* Majesty's Dominions and another, that Court would then violate the Law of Nations, because she would give her Sanction to a Practice that must be unjust, even though no Treaty of Commerce subsisted betwixt *Spain* and *Great Britain*. But, my Lords, by the Treaty of *Utrecht*, no private Differences betwixt the Subjects of the two Crowns, on these or any other Seas, are to be deem'd a sufficient Ground even to make Reprisals, until the Complaints of the respective Parties have been laid before the Courts to which they belong, or War is declared betwixt the two Crowns. If, my Lords, after we have, in the Resolutions now before us, asserted positively what our just Rights are, the Court of *Spain* should deny them to be such; there is no doubt, but that in such a Case we should be obliged to vindicate the Law of Nations, and the Honour of our own Nation. But, my Lords, I shall not agree to our resolving that the Law of Nations is violated by what is in the Power of a few private Men to commit every Day. Therefore, my Lords, I humbly move, that the Amendment proposed may stand thus: "And that the searching of such Ships on the open Seas under Pretence of carrying prohibited Goods, is a Violation and Infracti-  
"tion of the Treaties subsisting between the two Crowns."

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Debate on the  
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The Question being put upon this Motion, and then upon the whole first Resolution, it passed without any Division; and then the Question was put upon the second Resolution, which passed without any Debate or Division likewise; but the Question being put upon the third Resolution, Lord *Bathurst* spoke to the following Purport:

My Lords,

Lord *Bathurst*.

I am far from intending, by any thing which I am to trouble your Lordships with, to throw in any Obstacle that may prevent our coming to those Resolutions that are most proper, both for obtaining all reasonable Satisfaction from the *Spaniards*, and supporting the Influence which the Au-  
thority

thority of this House ought to have both at Home and A-  
 broad. Your Lordships have already agreed to two Resolu-  
 tions, which I think to be extremely proper, and may very  
 much contribute to answer both these Ends. But, my Lords,  
 since I have heard what has been urg'd by the two noble  
 Lords who spoke first on this Affair, have heard the Rights  
 of our Nation to a free Commerce and Navigation in *Ame-  
 rica* fairly stated, and have heard it prov'd, beyond the Pos-  
 sibility of a Reply, that these Rights have been notoriously  
 invaded and violated, I cannot help being amazed that such  
 a Heap of Memorials, such Packets of Letters, and so ma-  
 ny Volumes, I may say, of Credentials, should pass about  
 a Matter in itself so very clear, so very evident. Is it not  
 surprizing, my Lords, that for these twenty-three Years  
 (for so long has the trading Part of our Nation complain'd  
 of the *Spanish* Depredations) none of our Negotiators, none  
 of our Ministers, none of our Ambassadors have hit upon  
 so plain a Fact, as is contained in the first Resolution we  
 have now agreed to? A Fact, my Lords, that appears up-  
 on the Face of the very Treaties that regulate all the Com-  
 merce betwixt us and the *Spaniards*, both in *Europe* and *A-  
 merica*. This, my Lords, give me Leave to say it, must  
 create in me a Suspicion, that the Persons who (to use the  
 Words of the Resolution now under our Consideration)  
 made the frequent Applications on the Part of his Majesty to  
 the Court of *Spain*, either did not or would not understand  
 these Treaties, or never looked into them. I should be for-  
 ry, my Lords, to suppose that it was the Interest of any of  
 our Negotiators to prolong the Negotiations on this Affair;  
 I should be yet more sorry, to suppose that the Pusillanimity  
 of any of our Ministers at this Court, from whom our Mi-  
 nisters abroad receive their Directions, ty'd them up from  
 putting it home to the *Spanish* Court, and requiring a po-  
 sitive and a decisive Answer. But I think, my Lords, I may  
 venture to say, that if we had behaved in this Affair with a  
 Spirit and Resolution becoming *Englishmen*, our Credit had  
 never sunk so low, nor our Discontent at Home risen so  
 high. The worst Consequences that could have attended  
 such a Behaviour on our Part, must have been a War; and  
 that too, my Lords, a War upon an Element where we were  
 sure to be Masters. By such a War we might have gain'd,  
 but never could have lost, at least, we never could have lost  
 near so much as we have lost for some Years past, by a  
 Peace more destructive as well as more dishonourable in its  
 Consequences, than the most unsuccessful War. If, my  
 Lords, it should be objected to this, that we ought to be  
 cautious how we enter into a War with *Spain*, because we

Anno 11, Geo. II.

1737-8.

Anno 11. Geo. II. don't know what Part some of our Neighbours may act in that Event, I should be glad to be inform'd of any who shall make such an Objection, why we are not to suppose that, in Case of a War, our most powerful Neighbours will not be as ready to act in Favour of *Great Britain* as in Favour of *Spain*. I hope, my Lords, sufficient Care is taken to strengthen us with such Alliances, as may enable us to make as good a Figure in Case of a War in *Europe* as we have formerly made; and, I hope there has been nothing to our Prejudice concerted betwixt the Court of *Spain* and any other Court, that has escaped the Vigilance of our Ministers. I dare say, my Lords, none of these will be pleaded as Reasons why we have so long and so tamely put up with the Injuries and Insults we have met with from *Spain*; far less can it be pleaded that his Majesty has not a sufficient Revenue, to defray all the Expences that can attend our Ministers having a due Influence in the Courts of *Europe*, or procuring the best Intelligence of every thing that may affect the Honour and Interest of this Kingdom.

1737-8.

The Resolution which is at present under our Consideration, imports, that this House is satisfied with all the Steps taken by our Minister at the *Spanish* Court, to procure a just Satisfaction for our injured Merchants; for nothing less can be imply'd by these Words, "That it appears to this House, that frequent Applications have been made on the Part of his Majesty to the Court of *Spain*, in a Manner the most agreeable to Treaties and to the Peace and Friendship subsisting betwixt the two Crowns." But, my Lords, I own, when I examine the Instructions that have been sent to our Ministers at the Court of *Spain*; when I examine the Memorials that have, in Consequence of these Instructions, been delivered in by them to that Court, and when I examine the *Spanish* Minister's Answers and our Minister's Replies; I say, when I examine all these, I cannot help having some Difficulty in giving my Concurrence to this Resolution. In one of the Answers, the *Spanish* Minister is pleased to advance, "That there is no Mention made of the *American* Trade in any Article of the Treaty concluded in the twentieth Year of King *Charles II.* except in the eighth Article, where, *continues he*, as well with regard to the *Indies* as to other Countries, all that is granted by the Treaty of *Munster* in the twenty-third Year of King *Charles II.* is granted to *Great Britain* and her Ships, without any Distinction, upon their observing the Laws and Restrictions to which the Subjects of the United Provinces are limited and confined. This last Condition proves, that whatsoever is stipulated and granted to the Subjects

“ Subjects of the United Provinces, cannot be refus’d to Ann<sup>o</sup> 11. Geo II.  
 “ the *English*; but it proves at the same Time, that they 1737-8.

“ on their Part are ty’d down to the Observance of those  
 “ Laws, to which the Subjects of the United Provinces are  
 “ oblig’d by the Treaty of *Munster*.” These, my Lords,  
 are the Words of the *Spanish* Minister in his Memorial to  
 Mr. Keene, our Resident at the *Spanish* Court. But, my  
 Lords, they contain a Piece of very strange Sophistry. The  
*Dutch*, says he, are ty’d down to certain Regulations in the  
*American* Trade, and the Subjects of *Great Britain* upon  
 their observing these Regulations are entitled to the same  
 Advantages. My Lords, any Man that talks in that Strain,  
 must suppose the Person to whom he talks a Fool, or some-  
 thing worse than a Fool. For there is no Man who has ever  
 look’d into that Treaty, but must see that the *Dutch* are in-  
 deed ty’d down to certain Restrictions in the *European* and  
 the *East-Indian* Trade with *Spain*; but it puts them upon  
 the very same Footing with regard to the *American* Trade,  
 upon which the Treaty concluded in the twenty-third of  
*Charles* II. puts us. So that, my Lords, the Laws to which  
 the *Spanish* Minister says we are ty’d down, must be those  
 that are applicable to the Commerce in *Europe*. Indeed,  
 my Lords, when I first read this Passage in the *Spanish* Me-  
 morial, I thought there must be some particular Stipulation  
 betwixt the *Spaniards* and *Dutch* by the Treaty of *Munster*:  
 But when I came to look into that Treaty, I found an  
 Article in it that destroys the Possibility of any such Re-  
 gulations, with regard to the Navigation and Commerce  
 in *America*; for the sixth Article of that Treaty runs  
 thus:

“ And as to the *West-Indies*, the Subjects and Inhabitants of  
 “ the Kingdoms, Provinces, and Lands of the said Lords, the  
 “ King and States respectively, shall forbear failing to, and  
 “ trading in any of the Harbours, Places, Forts, Lodgments,  
 “ or Castles, and all others possessed by one or the other Par-  
 “ ty, viz. the Subjects of the said Lord the King shall not  
 “ fail to, or trade in those held or possessed by the said  
 “ Lords the States, nor the Subjects of the said Lords the  
 “ States fail to, or trade in those held and possessed by the  
 “ said Lord the King.”

This Article, my Lords, of the Treaty of *Munster* takes  
 away all Possibility of our being laid under the Restrictions,  
 in our Navigation in *America*, which the *Dutch* are subject  
 to in their Trade with *Old Spain*. Therefore, my Lords, I  
 think it is surprizing, that the *Spanish* Minister should talk  
 at this Rate, or that he should suppose that this Reason  
 could pass with any Man, who had ever look’d into the  
 Treaties,



Anno 13. Geo. II.  
1737-8.

Treaties between the two Crowns ; and it is no less surprising to me, that such a plain Answer to this Part of the *Spanish* Memorial should not occur to our Minister at that Court.

My Lords, it is certain, that in all the Treaties that have been made betwixt *Spain* and any Nation in *Europe*, the *Spaniards* have always stipulated an exclusive Right of Commerce to their own Settlements. And, indeed, the *American* Treaty of Accommodation, &c. which we granted to them, was rather explanatory of those Rights, which they before pretended to in their own Plantations, than giving them any new ones. It was a Treaty, my Lords, granted them at a Time when they were complaining of almost the same Grievances from our Subjects in *America*, as our Merchants now suffer from their *Guarda Costas*. They presented Memorials at our Court, in the same Manner as our Ministers now do at theirs ; and they received Answers from us much in the same Strain as we do now from them. We did not pretend, indeed, to justify any of the Captures or Depredations committed by our Subjects in *America*, neither did we endeavour to blind them with any strain'd Constructions of Treaties, much less did we threaten or bully them ; and in this, it is true, the Part we then acted, is different from the Part they act now. But, my Lords, it seems, we then knew very well that the *Spaniards* were sensible they were no Match for us ; for though we actually dispatched Orders to our Governors in *America*, directing a Cessation of the Hostilities, and a Restitution of unjust Captures ; and though these Orders, before they were dispatched from hence, were communicated to the *Spanish* Minister at this Court ; yet very often a private Packet by the very same Ship, to the very same Governor, enjoin'd him to pay no Regard to these Memorials, but to make the best Use of his Time and Power, in seizing and disposing of what *Spanish* Prizes he could take. This, my Lords, was the Manner in which our Government then acted ; I could never hear of any of our *American* Governors who was rewarded, either for allowing these Depredations, or for disobeying the public Orders that were sent him : Nor indeed were any of them punished ; for before such a Governor could be called over and brought to a Trial here, all Differences were commonly made up betwixt the two Courts, Matters were hush'd, the Governor was left in the Exercise of his Power, and the Sufferers to the Satisfaction of complaining. But, my Lords, unjustifiable as this way of Proceeding was, we do not find that any of the Subjects of *Great Britain*, who acted by virtue of a Commission from our Governors in *America*, ever exercised

exercised any Cruelty upon the Persons of the *Spanish* Subjects, who were so unhappy as to fall into their Hands ; we do not find that any of them were led into a dismal Captivity, or thrown into loathsome Prisons at the very Gates of our Capital. This Species of Rapine, which deprives a Man not only of his Property, but his Liberty, his Limbs, and sometimes his Life, was reserved for the *Spaniards* to practise in Time of profound Peace and Tranquillity, and upon those who own themselves their Friends and Allies. It is true, my Lords, that in those Days, a Gang of lawless Robbers, Natives of *England*, did commit great Excesses and Cruelties upon many of the *Spaniards* in *America* : But, they never had any Authority or Connivance from our Government ; and they did no more to the *Spaniards*, than they would have done to the *English*, had they had the like Booty to expect from the one as from the other. Our Governors and our Men of War at last suppressed them ; they hang'd as many of them up as fell into their Hands, and, I believe, there was not a Subject who enjoyed the Protection of our Laws, who did not heartily detest them. But, my Lords, though the Circumstances of our Commerce and Navigation in *America* now, bear a near Resemblance to their Case then, in both these Respects, yet we have endured their Insolencies much longer than they did ours. Their Complaints and our Depredations did not last for above two or three Years at farthest. But their Outrages have been for twenty Years continually repeated, unprovoked by any Act of Hostility, and in Return for many Instances of Favour and Friendship. Besides, my Lords, I conceive we are much more able to command Redress from *Spain* now, than they were to command it from us in those Days. The Succession to their Crown was then doubtful, they were harrassed and exhausted by a long and unsuccessful War, and were destitute of proper Alliances to make Head against our naval Power. But this, my Lords, is not our Case ; his Majesty is enabled to make as good a Figure at Sea as any of his Predecessors, and I believe, a much better. We have enjoyed a long and profound Peace, and I hope, my Lords, the Effects of that Peace will be felt by the Nation, if we are obliged to enter into a just and a necessary War. We have received Provocations enough to rouse the most insensible ; we have suffered as long as ever Prudence could require. And, though I believe every Lord here is of Opinion that Peace is to be preserved, upon fair and honourable Terms ; yet, the Chance of War is, undoubtedly, preferable to such a Peace as we have for these twenty Years past enjoyed with *Spain*. I hope, my Lords, if we come to the

Annex. Geo. II.  
1737-8.

Resolution

Anno 18. Geo. II. Resolutions now proposed, we shall act with more Vigour  
 1737-8.

than has hitherto been exerted ; for I can't be persuaded that the Applications to the Court of *Spain*, have been made with that Warmth and Resolution which the Affair required, or in the manner most agreeable to Treaties ; because many Things, that might have been urged from Treaties in favour of our injured Merchants, seem to me to be omitted in our Minister's Memorials : Nor, my Lords, can I be persuaded that our acting in this Manner was the proper Way to cultivate the Peace and Friendship subsisting betwixt the two Crowns ; because our Tameness and Submission appears plainly to have encouraged the *Spaniards* in their denying us Justice, or Redress : I am afraid, my Lords, it has heightened their Obstinacy, and has given that Court Reason to imagine that we either dare not, or cannot, or will not redress ourselves. But, my Lords, I hope the Measures that will be taken in consequence of these Resolutions will soon undeceive them. We have experienced his Majesty's Concern for the Interest of his People, and if *an adequate Satisfaction be not speedily procured*, it will not be owing to him, but to those who represent the Differences betwixt us and *Spain* in such a Light, as either makes the Damage done to our Navigation and Commerce inconsiderable, or to those who condemn the manner in which the Sufferers traded, as illicit, or wrest the Sense of Treaties to favour the Violences of the *Spaniards*.

My Lords, I think it appears both from the Proceedings of the other House, so far as they have come to our Knowledge, and by the Papers lying upon our Table, that there is no Necessity for any farther Enquiries. The Sufferings of our Merchants, and the Outrages of the *Spaniards* have been proved beyond Controversy ; they have been shown, after the strictest Examination, to be contrary to the Tenor of Treaties and the Law of Nations. Let us therefore unanimously concur in a proper Defence of our undoubted Rights, and demand a Confirmation of those Privileges to which public Compacts and established Treaties have evidently entitled us. But let us not too hastily agree to this Resolution, which supposes our Applications more regular and forcible, and perhaps the Court of *Spain* more obstinate and unreasonable, than they will appear upon an exact Consideration.

However, I shall not take the Liberty to propose any Amendment to this Resolution, or to offer any other Resolution in its Room. I submit to your Lordships better Judgment in every Thing I have said ; which, I assure your Lordships, was not spoken with any Intention to bring us into a Debate. On the contrary, I am of Opinion, that nothing can contribute so much to the Figure which this Nation ought

to

to make abroad, as the Unanimity of the *British Parliament* Ann. 1737-8. Geo. II.  
 on this important Affair ; I should therefore chuse rather to acquiesce in what is not perfectly according to my own Judgment, than to give the World any Reason to believe that we are not unanimous on this Occasion.

The Duke of *Newcastle*.

My Lords, it must give the most sensible Pleasure to every Duke of *Newcastle*, Man, who wishes well to the Interest of *Great Britain*, and the Honour of the Crown, to find that the Parliament has been as tender of the Interests of our injured Merchants, as they have been unanimous in representing their Grievances. But it will give me great Concern, if the Endeavours of Parliament to procure them Redress, should occasion any Reflections on the Conduct of those whom his Majesty has thought proper to entrust with the Management of the Points that remain undecided betwixt us and the Court of *Spain*, or of the Points that have already been adjusted. As I dare say, none of the noble Lords who spoke on this Occasion, have any other Views than what proceed from a sincere Desire to see these Differences accommodated in the Manner most agreeable to the Interest of this Nation : So I am convinced that I shall be pardoned, if I endeavour to set the Proceedings of his Majesty's Servants, on this important Affair, in a just Light.

The noble Lord who spoke last, seems to be apprehensive that our Minister at the Court of *Spain* has been bound up by the Instructions he received from our Court, from making those Instances, that were necessary to procure Redress to our injured Merchants, with that Zeal and Warmth which, from the Justice of their Complaints, he was entitled to exert. My Lords, if our Minister at that Court has been guilty of any Remissness of that Kind, I shall be very far from excusing it ; but one thing is certain, and I believe some of your Lordships know it by Experience, that it is very hard for those at a Distance, to direct a Minister at a foreign Court in what manner he shall behave ; and that it is unjust to blame him, if he does not act in the manner in which they think they would have done in his Situation. A Minister is, indeed, always supposed to be furnished with Instructions and Powers to make the Honour of his Prince and the Interest of his Country the first Objects of his Concern ; but it is hard to tie him down to any particular Measures, when these Interests come to be canvass'd, and to the very Words in which he is to pen every Memorial he shall present. An able Minister, my Lords, in these Circumstances, is to act as the Exigences of his Negotiation, and the Characters of those he has to do with, shall require. Thus far, I have taken

Anno 11. Geo. II. 1737-8. the Liberty to speak in general, as to the Part in which our Ministers both at home and abroad have acted, with regard to the Disputes betwixt us and *Spain*. But if, upon examining the Steps they have taken, it shall be found that they have acted any Way inconsistent with, or contradictory to, the Interest of this Nation; if it shall be found that the Steps they have taken are even not agreeable to the Resolutions we are coming to, I shall be far from vindicating them; I shall be as willing as any Lord here, that they fall under the Censure of this House, and be given up to the Justice of their Country. What the noble Lord who spoke last principally insisted on, I think, was, that the Memorials of our Minister at the Court of *Spain*, and the Representations he made, were not expressive of our Rights to a free Navigation and Commerce to and from any Part of his Majesty's Dominions in *America*. My Lords, I have look'd pretty exactly into these Memorials, and dare venture to affirm, that our Rights are fully and expressly asserted in them, and that there has been no Omission of any Circumstance in our Favour, that could reasonably occur to our Minister at the Time of his presenting these Memorials. In the Memorials deliver'd by the *Spaniards* to our Minister dated the 10th of last Month, the *Spanish* Minister had said, 'That there was no Article in the Treaty of Commerce made with the *Spaniards* in the 20th Year of King *Charles* II. except the eighth, applicable to the Navigation carried on by the two Nations in *America*;' thereby intimating that, on these Seas, the *Spaniards* were not tied up to the manner of visiting our Ships prescribed by the said Treaty; but that their *Guarda Costas* might seize them whenever it appeared that they had unnecessarily altered their Courses to make any of the *Spanish* Ports.' This, my Lords, was a very interesting Point to our Navigation and Commerce, and had our Minister yielded it up to that Court, or had our Ministry here given him any Instructions for that Purpose, he and they, no doubt, had been guilty of betraying the Interests of their Country. But I humbly conceive, the Memorial which our Minister, by order of his Court, presented in answer to that Memorial of the *Spanish* Minister, contains a full and explicit Answer to this unjustifiable Claim of the *Spaniards*. He tells that Court, what all the Lords who have spoken on this Occasion have admitted, 'That we do not pretend to a Right of trading with the *Spanish* Settlements in *America*, because there is not only no Article in the Treaty made in the 20th of King *Charles* II. that can authorize such a Trade, but that the whole Tenor of the Treaty made three Years after, absolutely prohibits it.' " And that we " were

“ were not confined to particular Latitudes, or subject to any Anno 11. Geo II.  
 “ Seizures, unless detected in the Exercise of unlawful Com- 1737-8.  
 “ merce.”

This, my Lords, is what the noble Lord who proposed the Amendment to the first Resolution we have come to, principally insisted on. For I think the noble Lord seemed to be of Opinion, that the exclusive Article against our trading to the *Spanish West-Indies*, in the last mentioned Treaty, was the principal Security we had against the Encroachments of the *Spaniards* upon our Navigation in these Seas. And, my Lords, I think, this Answer of his Majesty's Resident at the *Spanish* Court, was a much more proper Answer to their Claim of searching, than if he had entered into a long and tedious Disquisition about the Sense of the sixth Article of the Treaty of *Munster*, whether it respected the *Dutch* and *Spanish* Commerce in *America* as well as in *Europe*, or that of *Europe* alone. Your Lordships likewise find, that in the Representation of our Minister, which gave occasion to that Memorial of the *Spanish* Minister, he urges the very thing (and almost in the same Words) which is contained in your Lordships first Resolution. He insists, that the *British* Ships are incontestably entitled to a Right of carrying on a *lawful Commerce* in *America*: And this *lawful Commerce*, according to your Lordships Sense of the Words, is here restrained to our Liberty of trading in any Commodities to and from any Part of his Majesty's Dominions. At the same time he remonstrates, that even tho' some Goods which may be thought the Growth of their Colonies should be found on board of our Ships by a *Spanish Guarda Costa*, that Circumstance cannot be a just Ground to the *Spaniards* for confiscating the whole Ship and Cargo. And to support this, he relates the 15th and 23d Articles of the Treaty made in the 23d of King *Charles II.* My Lords, I cannot conceive that any Words can come up more fully to the Resolution which your Lordships have just now come to, than those of the Memorial. And I am convinced, had the noble Lord who spoke last, considered these Memorials with that Accuracy he is so much Master of, his Lordship would have been of my Opinion. But as it is necessary for the Justification of our Ministers here, to take a farther View of the Memorials which his Majesty's Resident in *Spain*, presented in consequence of his Instructions from this Court, I shall beg your Lordships Indulgence for a few Words more. My Lords, when we take a View of the several Papers lying before us, we see that his Majesty's Instances are not confined to a bare Demand of Reparation of the Injuries done our Merchants, but insist on our having Security for the quiet Enjoyment of all their just Rights for the future. The *Spanish* Mi-

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nister had pretended that our Ships could not claim a Right to be visited *only* in the manner prescribed by the Treaty made in the 20th of King *Charles II.* And, I think, the Words of the Memorial given in to the Court of *Spain* by his Majesty's Minister there, in answer to this Assertion, come so fully up to what appears to be the Sense of this House, that I doubt much if the noble Lord who spoke last would undertake to improve them. It is there insisted upon, 'That the particular Regulations set down in that Treaty made in the 20th of King *Charles II.* to be observed by the Subjects of both Nations in regard to Navigation in Places where it is agreed to be free, far from being repugnant to the Treaty concluded three Years after, are conformable thereto, and extend, and ought necessarily to be extended to the Ships and Effects of the Subjects of both Nations, in *whatever Seas they are met with*, whether in *Europe* or any other Part of the World.' These, my Lords, are the Words of the Memorial, which are submitted to your Lordships Consideration. And they suggest that our Ships ought only to be visited by two or three Men in a Long-boat, as the noble Lord who offered the Amendment observed. I shall now proceed to examine if our Ministry has been deficient, by not making proper Applications at the Court of *Spain* upon the other Points of Difference. The manner of carrying on the Process of Confiscation, when any of our Ships were seized by the *Spaniards*, was a Case that very much required the Interposition of our Court, and no doubt will be brought under a proper Regulation, when the other Differences come to be adjusted. By the Treaties betwixt *Spain* and *England*, it is certain that each Nation has a Right to judge how far any Ships, or Vessels, brought as Prizes into her Ports, are legally confiscable. But this Right has been shamefully abused by the *Spaniards*, who, after they seize a Ship belonging to *Great Britain*, detain the Master and his Crew on board their own Ship, during all the Time in which the Process is carried on; It is true, the *Spanish* Governor assigns them Counsel; but then this Counsel has no Opportunity of knowing what Defence the Prisoners can make, because they never once see them during all the Time the Process is carrying on; nor are they even allowed the Liberty of seeing so much as one Paper which may make for the Prisoners, they being before all seized and sequestrated by order of the Government: So that, the Defence, that is made, is at best a mock Defence. This Abuse, my Lords, we have complained of in the strongest Terms at the Court of *Spain*; and it was, doubtless, much owing to this Practice, that the equitable Intentions of the King of *Spain* have been so often baffled, and

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so many of our Ships, carrying on a fair and lawful Trade, confiscated by the Partiality of Judges and Governors. We have likewise, my Lords, complained in the strongest Terms of the Hardships our Merchants are under, who enter their Appeal to the Council of the *Indies* in *Old Spain*, against the Decision of the Governors in *America*, by being deprived of bringing any other Evidence in their own Favour, but what has been already admitted in their Courts of Judicature in *America*. And there is great Reason to believe that the King of *Spain*, both from his own equitable Intentions, and from a Consideration of the Superiority of our Naval Force, will agree to a proper Regulation. But there are some Points, perhaps, which may admit of a little Dispute, when Things come to be settled in the Way of Negotiation. I believe it will not be easy for us to determine the exact Value of our Merchants Losses; especially, if it is true, as I am afraid we have but too much Reason to suspect, that some of our Merchant-ships, that have been seized by the *Spaniards* on the *American* Seas, had actually been concerned in an illicit Trade with their Settlements, and laden with their Goods. I agree, indeed, with the noble Lords who have spoken on this Head, that it was against the Faith of Treaties, for any Ship commission'd by the King of *Spain* to attack or search an *English* Ship or Vessel on the open Seas. But, my Lords, if after such a Seizure has been made, a Confiscation of that Ship has followed upon plain and incontestable Evidence, given in before the *Spanish* Courts of Judicature, that such a Ship was concerned in an illicit Trade with the *Spanish* Settlements in *America*; I say, my Lords, in such a Case, I doubt much if a Minister could entirely be justified, in reclaiming such a Ship, or demanding an Equivalent in Money. My Lords, I do not mention this with any Design of vindicating the *Spaniards* in their Depredations, which I am sensible have been unjust in themselves, as well as attended with many aggravating Circumstances. I do it only to shew to your Lordships, that, though the King of *Spain* is disposed to redress the Injuries that have been done us, and which, as I have shewn to your Lordships, our Ministers have complained of in the strongest Terms, there may arise certain Points worthy of being discuss'd in an amicable Manner, and in which perhaps it may be necessary as well as prudent in both Parties, to recede a little from the Rigour of their Demands. But, my Lords, when I say this, I have not the most distant Thought, that we ought to give up the least Point of our Right to a free Navigation in the *American* Seas. This, I am unalterably for asserting at all Events; but I think, the most proper Way to secure it, is by shewing

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ing the World that we will as little support unwarrantable Practices in our Merchants, as we will suffer them in others. And this Manner of Proceeding will convince the other Powers of *Europe*, that we have Right as well as Power on our Side. But should we precipitately enter into a War with *Spain* upon any doubtful Points that may remain undecided betwixt us, or should we attack them without giving them an Opportunity of making us Reparation in an amicable Way, the other Powers of *Europe* would immediately take the Alarm ; they might look on our Proceeding as the Effect of a Design, either to seize upon some Part of the *Spanish* Dominions in *America*, and to annex it to our own Crown ; or as an Attempt to force the *Spaniards* to allow us a free Trade and Commerce with their Settlements in *America*. Did any of our *European* Neighbours, my Lords, suspect that we had formed a Design to dismember any Part of the *Spanish* Monarchy from that Crown, there is not the least Doubt but they would look upon us with a very jealous Eye ; because, as your Lordships know, the further Alienation of any Part of that Monarchy is strictly guarded against in a separate Article of the Treaty of *Utrecht*, and for the Observance of this Article both we and the *French* are Guarantees. If it were suspected, that we designed to force the *Spaniards* to allow us a free Trade in all its Branches to their Settlements in *America*, the *French* would not fail to oppose us in such a Design, the King of *Spain*, in the same Treaty of *Utrecht*, having laid himself under an Engagement, not to grant it to the Subjects of any Nation of *Europe* except his own : And the *French* Monarch, by the same Treaty, was obliged to give up all Claim to the Exercise of any Commerce to the *Spanish* Settlements there. This, my Lords, has always been look'd upon as a necessary Step towards preventing any one Nation in *Europe* from becoming too rich and too powerful for the rest : And the preserving the sole Right of Navigation and Commerce to and from the *Spanish* Settlements in *America*, to the *Spaniards* themselves, was not the Effect so much of the *Spanish* Policy, as of the Jealousy which the Powers of *Europe* entertained among themselves, lest any other should acquire too great a Property in that valuable Branch of Commerce. They knew that while the Treasures of the *Indies* were the Property of the *Spaniards*, or at least while they centred in *Spain*, that, sooner or later, their Subjects must have a proportionable Share ; because that Monarchy is destitute of many of the Advantages, which the other Nations of *Europe* enjoy, from their Manufactures and the Industry of their Inhabitants ; and that consequently it was not in the Power of the *Spaniards*, let them have never such

such an aspiring and politic Prince at their Head, to monopolize these Treasures. Whereas, should too large a Share of them come into the Hands of any other Nation in *Europe*, whose Situation, Power or Trade, render them perhaps already formidable to their Neighbours, they might be employed to Purposes inconsistent with the Peace of *Europe*, and which might one Day prove fatal to the Balance of Power, that ought to subsist amongst her several Princes. In such a Case there is no doubt but that a formidable Alliance would be made against the Power thus aspiring; and should the Differences at last come to be made up by a Treaty, it would be found that the most probable Way to secure the general Peace, is to suffer the *Spaniards* to remain in the same Situation, as to their *American* Settlements, they are now in. I know, my Lords, that in the same Year in which the Treaty of *Utrecht* was concluded, some Stipulations were made in our Favour as to the *American* Trade, particularly the Contract for Importation of Slaves into the *Spanish Indies*, which was made in consequence of the 12th Article of the Treaty of Commerce at *Utrecht*. Three Years after, we likewise obtained a Treaty of Declaration in regard to the said Slave Trade; which Treaty was confirmed by the Treaty of *Madrid*, which was concluded five Years after. But, my Lords, the Privileges which we gain'd by these Treaties, and the Execution of them, have put both our Government and our Merchants to great Expence and Trouble in their Solicitations at that Court; and the Obstructions our Interests met with there, no doubt, were secretly promoted and encouraged by some of our Neighbours, who, I believe, might otherwise wish us very well, but could not, for the Reasons I have already given, bear to see any Alteration made in the *American* Commerce, that might endanger the Balance of Power, which the Princes of *Europe* have always thought so necessary to her Quiet.

From these Considerations, my Lords, were there no other, I think it evidently appears, that to plunge ourselves into a War with *Spain*, before we left them inexcusable in their Conduct towards us, would be a very impolitic Step. For, if we meet with Success in such a War, the greater the Success, the greater will be the Jealousy of our Neighbours, and the stronger their Endeavours, either secretly or openly, to deprive us of the Advantages our Arms may have acquired. If the War is unsuccessful on our side, it will confirm the *Spaniards* in their Refusal to do us Justice, and gratify their Pride and Insolence. Besides, my Lords, let our Success in a War with *Spain* be as great as the best Friend to *Britain* could wish; I am afraid, even in that Case,

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Anno 11. Geo. II. Case, our other Merchants would have as much Cause to complain of our Courage, as our *West-India* Merchants affect to do of our Forbearance. Your Lordships are to consider, that the *French*, by observing an Appearance of an exact Neutrality, may run away with the most gainful Branches of our Commerce, which are those to *Portugal*, and to *Turkey*; our Trade to *Old Spain* must be entirely in their Hands, and our Trade to all other Places rendered precarious by their Privateering. Thus, in the End, we may find ourselves Losers by our Conquests. So that, my Lords, there is no Occasion for any one to be surprized, that no violent or precipitate Measures have been yet entered into against *Spain*, and that our Ministry has hitherto endeavoured rather to *persuade* than to *compel*. I say, my Lords, to *persuade*; for I think it is no hard Matter to convince a *Spaniard*, who knows any Thing of the Differences betwixt us and that Court, that it is for the Advantage of his Nation, that the Matters of Dispute betwixt us should be adjusted in an amicable Way. For, should the *Spaniards* obstinately refuse to come into reasonable Terms, our Cause would become the Cause of all *Europe*; every Power in it would look upon the Injustice they do to us, as a Prelude to what they themselves are one Day to expect. This Conduct will convince all our Neighbours, my Lords, that we have no Design to engross any Part of the *Spanish* Monarchy to ourselves, with a View of disturbing the Peace of *Europe*, or of making them more dependent upon us; for hereby they must see that we are forced into a War, in which we are supported by Justice; and that we are acting from no Principle either of Ambition or Avarice, but solely from the Motives by which every People who understands or regards their own Interest must necessarily be determined. It will likewise give the King of *Spain* time to reflect both on his own Danger, in case of a Refusal, and to see his own Interest in case of a Compliance; and if he has been imposed upon by false Representations from his own Ministers, it may open his Eyes, and make him less susceptible of such Impressions in Time to come, and consequently a more firm Ally to *Great Britain*.

What I have said, my Lords, I think is sufficient to prove, that frequent Applications have been made to the Court of *Spain* on the Part of his Majesty, in a manner the most agreeable to Treaties, and to the Peace and Friendship subsisting between the two Crowns. I hope your Lordships are convinced, that our Ministers both at home and abroad have acted for the Honour and Interest of this Nation: And if any of your Lordships will take the Pains to compare the

Remonstrances

Remonstrances given into the Court of *Spain* by our Minister there, with the Resolutions that are now under our Consideration, I believe it will be found that it was not owing to any Defect of Application from the Ministry, that we have not long since had a full and ample Restitution in every Point. It was owing to the Obstinacy of the *Spanish* Court, and that Prince's being misinformed and imposed upon as to the Subject of our Difference, that they refused us Satisfaction; and it was owing to a tender Regard for the Interest of this Nation, that his Majesty did not employ Force in order to obtain it. The noble Lord who spoke last, was pleased to give your Lordships an Account of the Situation in which Things were in betwixt us and *Spain*, when the Treaty of the 20th of King *Charles II.* was granted. But I believe his Lordship is of Opinion, that our Conduct at that time was a Proof rather of the Power than of the Justice, or Soundness of Politics of our Nation. The *Spaniards*, it is true, were not then in a Condition to make head against the Power of *England*: But the other Powers of *Europe* interfered; they grew jealous, lest, if the *Spanish* Settlements should be ruined in *America* by means of our Depredations, they might be deprived of the Advantages they drew from their Commerce with *Old Spain*; and though at that time, there was no good Understanding betwixt the *French* and *Spanish* Courts, yet the *French* thought it much more for their Interest, that the *Spanish* Settlements in *America* should remain annexed to that Crown, than that any of them should fall into our Hands: And it appears, that the *Dutch*, those Rivals of our Trade, have always been of the same Opinion. Therefore, my Lords, it was not from any Inclination, or any pecuniary Consideration, that we had to accommodate Differences with, or to prevent Depredations upon the *Spaniards* in *America*, that we agreed to a Treaty which they thought so advantageous to themselves; but because we were sensible, that if we delayed any longer to do them justice, the other Powers of *Europe* would interpose and exert themselves in favour of the *Spaniards*. This, my Lords, was the true Reason why we granted them the *American* Treaty; and this must be the Case at all Times, when we or any other Power in *Europe* shall, by the Superiority of a naval Force, endanger any Part of the *Spanish* Acquisitions in *America*. I believe, as the noble Lord observed, the *Spaniards* at the same time remitted to us the Payment of a considerable Sum; but, my Lords, had there been no other Reason to oblige us, we could easily have found a Pretence for refusing the Payment of that Sum, and the same Force that protected

Anno 11. Geo. II. us against their Resentment in our Depredations, would have protected us in our Refusal to pay what was owing to them. Their giving up so considerable a Demand might indeed have great Influence over a Court, which stood so much in need of Money as that of King *Charles II.* generally did; but it is plain our principal Motive was, the Apprehensions we were under, lest our Neighbours should make the *Spanish* Quarrel their own.

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The noble Lord who spoke last, seemed to insinuate, that the Ministry had acted in a pusillanimous Manner, by bearing so long with the Insolence of the *Spaniards*: I hope I have shewed, that the Measures they have taken, have been both just and necessary. What Benefits would have ensued from more precipitate Methods of proceeding, what Advantages we could have proposed from rushing into a War with *Spain*, no Lord has yet informed us. The Debts contracted in the late War lye yet heavy on the Nation, and who but her Enemies can think with Patience of adding to the Burden?

The Advantages, if any, that we shall gain, may entail another War upon us, by which all *Europe* may be set on Fire; whatever we get by a War, must be by employing our naval Force, either in making Conquests in *America*, or in attacking and seizing the Plate-Fleet. Whatever Acquisitions our Arms may gain us in *America*, the Treaty for restoring Peace, as I have shewn, will probably take away; and all other Nations in *Europe* are too much interested in their Plate-Fleet, not to unite their Endeavours to secure it from us, or, at least, to reclaim the Treasure we may take in those Ships. Any Attempt of this Nature would endanger the Friendship of our best Allies, and then I should not be surprized to hear our Ministry as much blamed for disobliging our Friends, as now for encouraging our Enemies. It is much more safe for others to censure and direct, than for Ministers to act; and since I sat in this House my Lords, when a War with *Spain* was thought just and necessary by his Majesty and the Ministry, it was opposed by those who are now loudest in their Complaints against pacific Measures. This, my Lords, cannot but create a Suspicion, that the Outcries of some against the Government do not proceed so much from a Spirit of Patriotism, as of Opposition. And I believe there is nothing they so much dread, as our entering into a vigorous War, which would deprive them of the only Grounds of Opposition that the Conduct of the Ministry has left them. The only thing they are more afraid of, is the Prevention of a War, by a full Concession of all our Demands: But far be

it from me to imagine that such ungenerous Sentiments can have infected your Lordships, who will doubtless rejoice in the Honour and Prosperity of your Country, whether secured by the Power of victorious Arms, or the less hazardous Means of Treaty and Negotiations.

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The Earl of *Chesterfield*.

My Lords,

If I rightly understand the noble Duke, he has endeavoured to prove that nothing more could have been done for the Honour of this Nation, than has been done in our present Differences with *Spain* by our Ministers; and that it is not to be imputed to the King of *Spain*, but to his Ministers, that we have not had Satisfaction. Had the Injuries we suffered, my Lords, been of a short Continuance; had they been of no older Date than three or four Years, the noble Duke's Arguments might have given me a very favourable Impression of the Conduct of our Ministry. I know that the Forms of the *Spanish* Courts of Justice, together with the natural Phlegm of that People, subject those who have any thing depending before them, to great Inconvenience and unreasonable Delays. But, my Lords, when I reflect that we have complained, and complained with Justice, above twenty Years, I cannot help looking on such Delays as an absolute Denial of Redress, and concluding that the *Spaniards* intend to sell us their Friendship at no less Price than the Possession of our Settlements in *America*, and the exclusive Sovereignty of those Seas. Every Man must be convinced of this Truth, who has had an Opportunity of observing how their Conduct has varied in Proportion as they had any thing to hope or to fear from this Nation. About twenty Years ago, their Insolence provoked his Majesty to give such Instructions to his Admiral, as made them feel the Effects of our Resentment for several Years. During all that Time our Merchants were, I think, pretty free from any Apprehensions of the *Spanish* Depredations. But no sooner had that Court recovered from the Consecration, into which the Success of our Arms had thrown her, and strengthened herself with new Alliances, than her *Guarda Costas* renewed their Violences, and we our fruitless Solicitations. In this state Affairs continued till the Treaty of *Seville*. At that Time, as your Lordships know, the Court of *Spain* had one favourite Point in View, which she could never have obtained without our Assistance and Friendship; this was the Introduction of *Don Carlos* into *Italy* with 6000 *Spanish* Troops, in direct Violation of one of the principal Articles of the Quadruple Alliance. We even consented to this Alteration, though we thereby hazarded the

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Friendship

Anno XI. Geo. II.  
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Friendship of our old and firm Ally, the Emperor, who by that Introduction has since lost most of the Possessions he enjoyed in *Italy*. While this Negotiation was upon the Carpet, and while we seemed to make a Difficulty of gratifying the ambitious Views of the Queen of *Spain*, there was a Cessation of their Hostilities: For in the List of the Captures now before us, I do not see any that were made during that Time. I mention this, my Lords, to shew that the *Spanish* Monarch can make himself obeyed by his *American* Subjects and Governors, when he has an Interest to gratify; but that Motive no sooner ceases, than he and his Court are contented that their Orders should be disobeyed, and their Intentions misunderstood, by their Servants and Officers; and therefore we can never hope for the due Execution of any Treaty with *Spain* in our Favour, if we should leave it in her Power to elude it. This is a Point, my Lords, which will not admit of the least Dispute, if we consider in what Manner those Articles of the Treaty of *Seville*, that were in our Favour, have been executed. The 4th Article of that Treaty runs in the following Terms: "It having been agreed by the preliminary Articles, that the Commerce of *Great Britain* and *France*, as well in *Europe* as in the *Indies*, should be re-established on the Foot of the Treaties and Conventions antecedent to the 11th Year of King *George I.* and particularly, that the Commerce of *Great Britain* in *America* should be exercised as heretofore; it is agreed by the present Article, that all necessary Orders shall be dispatched on both Sides without any Delay, if they have not been sent already, as well for the Execution of the said Treaties, as for supplying what may be wanting for the entire Re-establishment of Commerce, on the Foot of the said Treaties and Conventions." How well this Article has been observed, the List of Captures before your Lordships will make appear. Can it be pretended that, since the Treaty of *Seville*, we have enjoyed the Benefit of one Article of the Treaties concluded betwixt us and *Spain* before the 11th Year of King *George I.*? Or rather do not the Circumstances, with which almost every Capture of our Ships has been attended, prove, that the *Spaniards* utterly disregard these Treaties? On our Side, indeed, this Article has been punctually observed, nor do I find an Instance of any Infringement of it by our Subjects in *America*, whose Hands seem to have been bound up on Purpose that the *Spaniards* might proceed in their Violences and Depredations with Impunity.

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By other Articles of the same Treaty it appears, that the *Spaniards* were even then determined that we should not reap any Advantage from it, longer than till their own Purposes were served. Had we insisted upon, and obtained an immediate Reparation of the Damages our Merchants then complained of, that could never have answered the Intentions of the *Spaniards*, which were to put off this Point till they had got their favourite Scheme brought about by our Assistance. Accordingly, by the 6th Article of the same Treaty we find, that “ Commissaries should be nominated with  
 “ sufficient Powers on the Part of their *Britannic* and *Catholic* Majesties, who shall assemble at the Court of *Spain*,  
 “ within the Space of four Months after the Exchange of the  
 “ Ratifications of the present Treaty, or sooner if it can be  
 “ done, to examine and decide what concerns the Ships and  
 “ Effects taken at Sea on either Side, to the Time specified  
 “ in the preceding Article. The said Commissaries shall  
 “ likewise examine and decide, according to the Treaties,  
 “ the respective Pretensions that relate to the Abuses that  
 “ are supposed to have been committed in Commerce, as  
 “ well in the *Indies* as in *Europe*, and all the other respective Pretensions in *America*, founded on Treaties, whether with respect to the Limits or otherwise. The said  
 “ Commissaries shall likewise discuss and decide the Pretensions which the King of *Spain* may have, by virtue of  
 “ the Treaty of the 7th of King *George* I. for the Restitution of the Ships taken by the *British* Fleet in the 5th  
 “ of the said King. And the said Commissaries, after having examined, discussed, and decided the abovesaid Points  
 “ and Pretensions, shall make a Report of their Proceedings  
 “ to their *Britannic* and *Catholic* Majesties, who promise  
 “ that within the Space of six Months after the making of  
 “ the said Report, they will cause to be executed, punctually and exactly, what shall have been so decided by the  
 “ said Commissaries.”

This Article, my Lords, seems to have been inserted into the Treaty, on Purpose that all the Advantages we could expect by it might be frustrated. Before the Commissaries could meet and decide upon the several Pretensions of the contracting Powers, the *Spaniards* were sure the Design they proposed by the Treaty would be effected. Accordingly we found, that no sooner had our Arms and Councils introduced *Don Carlos* into *Italy*, than new Difficulties against the Meeting of the Commissaries were started; and when they met, not one Point that concerned the Purpose of their Meeting was adjusted. And, my Lords, it is remarkable, that though the 8th Article of the same Treaty gives the Commissa-

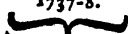
Anno 11. Geo II.  
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Anne II. Geo. II.

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Commissaries three Years from the signing of the Treaty to finish their Commission, yet by the 9th Article we find that the 6000 Men of the King of *Spain's* Troops and in his Pay, are to be introduced into the garrison'd Places, *without Loss of Time*. All these Circumstances, when compared together, must give every one strong Inclinations to believe that the *Spaniards* never meant to fulfill one Article of that Treaty, so far as it was in our Favour; and I cannot help thinking that our Ministers both here and at the Court of *Spain*, have been monstrously imposed upon, in not obtaining from the *Spaniards* clear and explicit Reasons why that Treaty was not fulfilled on their Parts, as well as it has been on ours. Had this, my Lords, been done, his Majesty and his Parliament might have judged what Measures were necessary to oblige the *Spaniards* to regard the Faith of Treaties, and our Ministers stood so far acquitted. This way of Proceeding must likewise have prevented the scandalous Insults that have wounded the Honour of this Nation, and the unjust Depredations that have almost destroyed the Freedom of her Commerce. And, my Lords, though it should be granted, that the Applications made on the Part of his Majesty at the Court of *Spain* have been in the Manner *the most agreeable to Treaties*, yet give me Leave to say, they have not been made in the Manner that was most agreeable to the Sense and the Interest of this Kingdom.

The noble Duke seemed to be of Opinion, that if we should now enter into a War with *Spain*, we might awaken the Jealousy, and draw upon us the ill Offices of the other Powers in *Europe*. My Lords, I am far from thinking War eligible when it is not necessary; but if it cannot be denied to be sometimes necessary, let the noble Duke shew us when it can be more so, than at present: If his Argument proves that we must not *now* assert our Rights by Arms, it proves equally that we must never assert them. I am entirely of his Grace's Opinion, that the Preservation of the *Spanish* Dominions in *America* in that Crown has been a Point much regarded by the Powers of *Europe*; but why should they be less jealous of an exorbitant Growth of the Strength of *Spain* there, than the just Privileges of the *British* Commerce? Or why should we imagine that the Princes of *Europe* should resent the Enforcement of Treaties in which themselves concurred? Neither the Capacity of our Negotiators, nor the Honesty of our Neighbours are much complimented by this Supposition.

I think we have already given sufficient Proofs, that neither Avarice nor Ambition have any Share in our Demands upon *Spain*;

*Spain*; nor is it to be imagined, if our Ministers had talked in a higher Strain, that *France* and *Holland*, the Powers which the noble Duke seems most to apprehend, would have been jealous of any Attempt to dismember the *Spanish* Monarchy. The first of these Powers seems at present too intent upon other Pursuits, to meddle in any commercial Differences betwixt us and *Spain*; and I believe she has entered into no private Stipulations to favour that Crown, in case of a Rupture; for how could such Stipulations have escaped the Vigilance of our Ministers? The noble Duke himself gave us a very good Reason to believe, that *France* would continue neutral; which is, that they cannot gain so much by making themselves Parties in the War, as they may gain by observing an exact Neutrality, as they have thereby an Opportunity of engrossing the most valuable Branches of our Commerce with *Portugal*, *Spain* and *Turkey*. So that if this Argument of the noble Duke's be good, we could have had nothing to apprehend from any immediate Interposition of *France* in favour of *Spain*. But I think even this Fear is chimerical; for though during the Heat of War our Commerce in those Parts might be interrupted, yet it must soon return to its former Channel. The *Portuguese* would be guilty of the most egregious Folly and Ingratitude, should they suffer any other Nation in *Europe* to rival us in Trade with them. The *Spaniards* themselves must purchase our Commodities; which has given Rise to this Proverb in *Spain*, *Peace with England, and War with all the World besides*. And, my Lords, as to our *Turkey* Trade, I do not see what the *French* could have done more in a Time of War with *Spain* to supplant us there, than they are doing every Day. The *Dutch* on the other Hand have long complained of the same Treatment from *Spain* that we complain of; and should we enter into a War with *Spain*, all the Rules of Policy oblige them to second our Attempts. I believe indeed that the present Situation of their public Affairs, is such as deprives them of the Means of giving us that Assistance which both their Inclinations and Interests direct. But, I dare say, my Lords, that if they are not able to afford us their good Offices, we shall have no Reason to be afraid of their ill ones. However, bad as their Circumstances may appear, if my Information is true, they have not put up with the Depredations and Insults of the *Spaniards* so tamely as some of their Neighbours, who are much more capable of doing themselves Justice. Nor can I hear that their Conduct has been as yet attended with any bad Consequences; and if, my Lords, there were any Danger of their repenting of the Resolution with which they have acted, I think we ought to assist them as much as possible.

Anno 11. Geo. II.

1737-8.

ANNO 11. Geo. II. possible. But I believe their Conduct may have a contrary  
 1737-8. Effect; and may make the *Spaniards* sensible how dangerous  
 it is to provoke a People who have no other Means of subsisting but Commerce, and whose Merchants are the Support of their State.

As to the Instances the noble Duke gave, in which it may be necessary to yield a little from the Rigour of our Demands; so far as I have looked into the List of Captures, and the Papers lying before us, I cannot find that any *British* Ship, seized by the *Spaniards*, upon the strictest Examination, appears to have been concerned in the prohibited Trade with their Settlements. I see, indeed, many Instances of our Ships and Men being seiz'd, against whom nothing can be pretended but that they were within Sight of the *Spanish* Coast; I see that others were seized for Reasons still more frivolous, and several for no Reason at all; at least, for no other Reason than that they were *British* Vessels: And, my Lords, granting it is true, as the noble Duke alledges, that some of our Merchants carry on a prohibited Trade in the *Spanish* Dominions in *America*, that can never take away the Justice of entering into a War, in order to force the *Spaniards* to observe their Faith, and to indemnify the fair Traders of this Nation, whom they have robb'd and plundered. For I will suppose, that if any of the Subjects of *Great Britain* have been concerned in such illicit Trade, the *Spanish* Governors have done all they could to prevent it, and have seized their Vessels as often as they have had Opportunity. But these Instances never can become a national Concern, because it is no more than if a Government were to punish a Highwayman or a Pirate. Besides, my Lords, I cannot understand the Law of punishing a Man, and then trying him; for such, I apprehend, is the Case which the noble Duke brought to prove that there was a Necessity to treat with the *Spaniards* before we fight with them. If a *Spanish* *Guarda Costa* should, in a suspected Latitude, board, and make Prize of a *British* vessel, and when the Process of Confiscation comes to be carried on, if it should appear that the Goods on board the *British* Vessel had been taken in at one of the *Spanish* Ports in *America*; I shall not enter into the Dispute how far such Ship became a lawful Prize; but I think it can admit of no Dispute, that the Owners and Crew of that Ship were punished before they were tried: For I take it to be a very great Hardship put upon the Master and Crew of a Vessel, that they are stop'd from proceeding on their Voyage, and should be glad to know, if it had appeared that such a Vessel had not been concerned in an illicit Trade, how her Owners could have recovered Damages from the *Spaniards*. Therefore,

fore, my Lords, though I know that the first Resolution we have come to, may prevent the *Spanish* Practice of stopping and searching our Vessels on any Pretence whatsoever for the future, yet I cannot see why our Ministers should not have sent, in plain Terms, to the Court of *Spain*, that there is not one Instance of their Depredations for which we require Reparation, that was not a direct Breach of their Friendship with us; and, my Lords, though I am far from thinking that any one of these Instances was a sufficient Reason for our breaking with *Spain*, yet I think, that if that Court pretended to justify any of the Captures that appear in the List before us, we had acted both prudently and honestly had we forc'd them to have renounced their Claim; because there can be no Reason given for their making Prize of any one of these Vessels, that won't equally justify their making Prize of all the Merchant-men his Majesty has in his Ports.

Ann. 11. Geo. II.  
1737-8.

The noble Duke was pleas'd to give us an Account, from the Copies of the Memorials lying before us, of the Instances made by our Minister at the Court of *Spain*; and his Grace seem'd to be of Opinion, that nothing was omitted by him that could be urged in favour of our Merchants. My Lords, I shall for once grant that this is Fact. But give me Leave to say that the *Spaniards* are, for that Reason, the more inexcusable; and we might have been more easily justified, had we proceeded to other Arguments than those in the Instructions and Memorials. Therefore, upon the Whole, I cannot help being of Opinion, that we have not acted, in this Affair, with that Vigour and Resolution, which the Dignity of our Crown, or the Importance of the Affair required: But where the Fault lies, I shall not pretend to point out.

The Lord *Hervey*.

My Lords,

I beg Leave to observe, that the noble Lord, who spoke last, seems to have lost View of the principal Intention of the Resolutions now before us; which is, if I am not mistaken, to lay before our most gracious Sovereign the Sense of this House with regard to those Points that ought to be the Basis of any future Negotiation with *Spain*; and at the same Time, to give his Majesty the strongest Assurances of our Resolution to stand by him in those Measures he shall judge most effectual for preserving our Rights of Commerce, and obtaining Satisfaction for the Damages that our Merchants have sustained by the *Spaniards*: But I humbly presume, that at present we are not met to censure the Conduct of his Majesty's Ministers for what is past.

I think the noble Duke made it unanswerably plain, from the very Words of our Memorial presented to the Court of

1737-8.

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*Spain*,

Anno 11. Geo. II.

1737-8.

*Spain*, that we have, in the strongest Terms, asserted our Claim to a free and uninterrupted Navigation in the *American* Seas; and this I think the noble Lord who spoke last seemed to allow, for his Lordship did not mention any particular Points in which their Representations to that Purpose were defective. But, says the noble Lord, why were we contented with giving in Memorials and Representations? or why did we so tamely bear the Breach of the Treaty of *Seville*? This, my Lords, I take to be the whole of what his Lordship has insisted on; and, in my Opinion, it admits of a very short Answer. Immediately after that Treaty, the Affairs of *Europe*, from Contingencies that were unavoidable, and impossible to be foreseen, took a very unexpected Turn; such a Turn, my Lords, as rendered it highly unadvisable in us to enter into an immediate War with *Spain*. But, my Lords, though our Forbearance might perhaps have but too much encouraged them in their Interruption of our *American* Trade, this Encouragement was amply compensated by an Increase of our Trade, which by Means of our Neutrality we enjoyed with other Places of the World, while most of our Neighbours were involved in Quarrels with one another. Thus our Claim upon the *Spaniards* was indeed upon very good Grounds delayed, but not given up; and it appears, that when the proper Time came, we did not fail to assert it.

I generally observe, my Lords, that when this Subject is mentioned by one Party in the Nation I hope we have no Parties in this House) they go very near to assert that there is not a Shilling comes to us by our Trade with any other Quarter of the World but with *America*. My Lords, I acknowledge that our *American* Trade is very beneficial, but I neither think that the *Spaniards* have entirely ruin'd it, nor that it would have been prudent in us to have endanger'd the general Interests of the Nation, before the several Losses our Merchants complain of had been verified upon a Parliamentary Enquiry. I shall readily allow that they are now properly vouched, and that the Ministry will act a Part very inconsistent with the Good of the Kingdom, if they do not exert themselves in such a manner as may procure us ample Satisfaction. But if this is obtain'd by Negotiation, it must be much more agreeable to those who have the Interest of their Country alone at Heart, than if, in order to obtain it, we rush into a War, of which Nobody can foresee the Consequences. His Majesty, by the seasonable Preparations he has made, and the Orders he has given, will make *Spain* and all the World sensible that he is resolved upon the Alternative, either of obtaining an advantageous Peace, or entering into

an immediate War. And, my Lords, we have the Pleasure of seeing that his Majesty's Conduct has had one good Effect, by inducing the King of *Spain* to give Orders for releasing such of our Sailors as were imprisoned. This, my Lords, made a considerable Article of our Merchants Complaints; and why may we not hope for as effectual a Redress as to the other Articles? Or, why should any Lord make any Difficulty of agreeing to a Resolution, which is so strongly supported by the Papers lying upon our Table? Our giving the World Reason to suspect that his Majesty is ill serv'd by his Ministers, when the contrary appears so evidently, can never contribute to the Recovery of our Honour and the Discouragement of our Enemies. And I cannot but be of the noble Lord's Opinion, who said, that our Unanimity in this Affair was the most effectual Expedient for promoting our Interest.

Anno 11. Geo. II.

1737-8.

Upon the Question, the first Resolution, as it stood amended, and the other Resolutions, as proposed by the noble Lord, were agreed to without any Division; and a Committee being named to draw up an Address to his Majesty, with the Resolutions, after having retired a small Time, they returned with an Address drawn up, which was agreed to without Division, and presented next Day by the whole House to his Majesty.

Third Resolution carry'd.

The Address, and his Majesty's Answer thereto, were as follows, viz.

*Most gracious Sovereign,*

**W**E your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, having taken into our serious Consideration the many unjust Violences and Depredations committed by the *Spaniards*, upon the Persons, Ships, and Effects of divers of your Majesty's Subjects in *America*, have come to the following Resolutions, which we beg leave in the humblest Manner to lay before your Majesty, for your royal Consideration, viz.

1. Resolved, That the Subjects of the Crown of *Great Britain* have a clear and undoubted Right to navigate in the *American Seas*, to and from any Part of his Majesty's Dominions; and for carrying on such Trade and Commerce, as they are justly entitled unto in *America*; and also to carry all Sorts of Goods and Merchandizes, or Effects, from one Part of his Majesty's Dominions to any Part thereof; and that no Goods, being so carried, are by any Treaty subsisting between the Crowns of *Great Britain* and *Spain*, to be

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deemed or taken as contraband or prohibited Goods, and that the searching of such Ships on the open Seas, under Pretence of their carrying contraband or prohibited Goods, is a Violation and Infraction of the Treaties subsisting between the two Crowns.

2. Resolved, That it appears to this House, that as well before, as since the Execution of the Treaty of *Seville*, on the Part of *Great Britain*, divers Ships and Vessels, with their Cargoes, belonging to *British* Subjects, have been violently seized and confiscated by the *Spaniards*, upon Pretences altogether unjust and groundless; and that many of the Sailors on board such Ships have been injuriously and barbarously imprisoned and ill-treated; and that thereby the Liberty of Navigation and Commerce belonging to his Majesty's Subjects, by the Law of Nations, and by virtue of the Treaties subsisting between the Crowns of *Great Britain* and *Spain*, hath been unwarrantably infringed and interrupted, to the great Loss and Damage of our Merchants, and in direct Violation of the said Treaties.

3. Resolved, That it appears to this House, that frequent Applications have been made, on the Part of his Majesty, to the Court of *Spain*, in a Manner the most agreeable to Treaties, and to the Peace and Friendship subsisting between the two Crowns, for redressing the notorious Abuses and Grievances before-mentioned, and preventing the like for the future, and for obtaining adequate Satisfaction to his injured Subjects; which, in the Event, have prov'd entirely fruitless, and of no Effect.

We think it our Duty, on this important Occasion, humbly to represent to your Majesty, that we are most sensibly affected with the many and grievous Injuries and Losses sustained by your Majesty's trading Subjects, by means of these unwarrantable Depredations and Seizures; and to give your Majesty the strongest and most sincere Assurances, that in case your friendly and powerful Instances for procuring Retitution and Reparation to your injured Subjects, and for the future Security of their Trade and Navigation, shall fail of having their due Effect and Influence on the Court of *Spain*, and shall not be able to obtain that real Satisfaction and Security, which your Majesty may in Justice expect; we will zealously and chearfully concur in all such Measures, as shall become necessary for the Support of your Majesty's Honour, the Preservation of our Navigation and Commerce, and the common Good of these Kingdoms.'

His

His Majesty's most gracious Answer.

Anno 11. Geo. II.

1738.

My Lords,

" I Am sensibly touched with the many Hardships and Injuries sustained by my trading Subjects in *America*, from the Cruelties and unjust Depredations of the *Spaniards*. You may be assured of my Care to procure Satisfaction and Reparation for the Losses they have already suffered, and Security for the Freedom of Navigation for the future; and to maintain to my People the full Enjoyment of all the Rights to which they are entitled by Treaty, and the Law of Nations.

" I doubt not but I shall have your Concurrence for the Support of such Measures, as may be necessary for that Purpose."

May 20, The King put a Period to the Session, with a Speech to both Houses: Which see in *Candler's History*, Anno 11. Geo. II. 1738. Page 338. Anno 12. Geo. II. 1738-9.

The FIFTH SESSION of the Second PARLIAMENT of King GEORGE II.

WAS appointed, by his Majesty's Proclamation, to meet on the 18th of *January* 1738-9, for the Dis-<sup>patch</sup> patch of divers weighty Affairs; and accordingly both Houses assembled at *Westminster* on that Day; but the Ratification of the Convention lately concluded with *Spain* not being arrived, the Parliament was farther prorogued to *Thursday* the 1st of *February*, when his Majesty came to the House of Lords, and opened the Session with a most gracious Speech from the Throne; to be found in *Candler's History* Anno 12. Geo. II. 1738-9. Page 339.

Which Speech being immediately taken into Consideration in the House of Lords, the Duke of *Portland* stood up and spoke as follows:

My Lords,

His Majesty has so fully informed your Lordships, in the gracious Speech he made from the Throne, of the Success that has attended the prudent and pacific Measures, which have been taken on the Part of *Great Britain* since our last Meeting, that I shall trouble your Lordships with but a very few Words.

The Motives that have determined his Majesty to lay the Foundation of an advantageous and honourable Peace, rather than risk the Consequences of an expensive and hazardous War, will be best understood by taking a View of the Nature of our Differences with *Spain*, the Disposition of our Neighbours,



Anno 12. Geo. II.

1738:9.



Neighbours, and our own Situation. Our Differences with *Spain*, my Lords, relate entirely to Trade : they are not founded on her aspiring to universal Monarchy, as in the Days of *Queen Elizabeth* ; they are not founded on the Rights of a doubtful Succession, as in the Days of *Queen Anne* ; nor on the ambitious Encroachments upon the Property and Quiet of our Allies, as in the Reign of his late Majesty King *George I.* Were any of these the Case betwixt us and *Spain*, we could fall on no Way to bring her to Reason, but by reducing the Power that supported her Ambition. In this, we might, as formerly, be assisted by the Councils and Arms of powerful Allies, and we might have reason to expect the same Success. But our Differences at present are founded entirely on Affairs of Commerce, to which nothing can be more fatal, nothing more destructive than a War, I had almost said, my Lords, than a successful War, and nothing more beneficial than a safe and honourable Peace. With what Gratitude then ought we to regard a Prince distinguished by Military Virtue, who knows no Glory that is separate from the true Interest of his Subjects, and disregards all Fame, that is not acquired by those Means that will transmit his Name to Posterity, as the Father of his Country ! This, my Lords, is the Title which his Majesty has to the Acknowledgments of this House and Parliament, and to the Acknowledgments of all the Nation on this Occasion.

As to the Disposition of our Neighbours, my Lords, I own that I am far from thinking, that it would be favourable to *Great Britain*, if we had gone to War before we had used our utmost Efforts to obtain Peace : Such a Conduct in our Administration would have sounded an Alarm to all *Europe*, that *Great Britain* was resolved to obtain, by the Terror of her Arms, what she had no Right to expect from the Sense of her Treaties. We might then have seen as formidable a Confederacy against the Power of *Great Britain*, as we saw not many Years ago against the Ambition of *France* ; and at the same Time we must have been left without one Ally, or one Confederate ; happy if we could prevail with those, who are now our best Friends, to remain neutral. The *French*, according to the Representation of our own Merchants, have already cut us out of some valuable Branches of the *American* Commerce, and watch but an Opportunity to strip us of others. Such an Opportunity, my Lords, they never can have, while we are at Peace with *Spain* : But a War would soon put an Opportunity into her Hand, by disjoining the Interests of the Crowns of *Spain* and *Great Britain*, and giving *France* the Means of injuring

injuring both, by siding with either, as she finds it most conducive to her own Advantage. So that whoever understands the Interests of *Great Britain* as a trading People, and reflects on the vast Load of Debts which the carrying on even a successful War has laid her under, must be fully convinced that scarce any Peace can be so bad, as, at this Juncture, not to be preferable to a War. I say, my Lords, at this Juncture, when *Great Britain* enjoys more Trade, more Peace, and more Plenty, than she was ever known to do, under any of his Majesty's Predecessors. To hazard all these Advantages, by wantonly plunging the Nation into a destructive War, would be to act inconsistent with that paternal Regard which his Majesty has at all Times express'd for the Welfare of his Subjects; in short, my Lords, it would be a Measure neither becoming his Majesty to take, nor your Lordships to approve.

Anno 12. Geo. II.

1738-9.

But, my Lords, abstracted from Considerations of a domestic Nature, give me leave to say, that it must have been highly impolitic, on account of the Disposition of Affairs abroad, and the unsettled State of *Europe*. The same System of Power no longer prevails in *Europe*, as when the glorious Confederacy was formed to reduce the Ambition of *France*; the Emperor cannot now send his Generals out at the Head of those fine Armies, that, in Concert with us, acted so noble a Part for the common Rights of *Europe*. His late unsuccessful Campaigns against the *Turks*, the bad State of his Finances, and the Divisions which subsist amongst the Princes of the Empire, give him every thing to fear, if *Spain* should, upon any Provocation by our acting upon the offensive, be furnished with a Pretext for calling in her Allies to her Assistance. In this Case, my Lords, we might be so embarrassed, as not to have it in our Power to act with that decisive Weight, which every good *Englishman* would wish to see, if the Ambition of *France* should prompt her to take Advantage of the present low Circumstances of the Empire.

The *Dutch*, my Lords, a People always inspired with the Love of Liberty, are now no longer able to send out those formidable Navies, which once disputed the Empire of the Seas with *England* herself. She is no longer able to keep up those Troops that check'd the Progress of the Greatness of *Spain*, and reduced the Power of *France*. They labour under a vast Load of Debt, which was contracted by supporting a just and necessary War, and have no other way of retrieving their Affairs but by cultivating the Arts of Peace. Thus, my Lords, our two best and most natural Allies are, in a manner, incapacitated from affording us almost

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Almost any Assistance in case we should enter into a War, and thereby *Great Britain* must singly sustain all the Burden, though other Nations may, perhaps, in the Event, reap the Profits. Besides, who can pretend to say to War, *Thus far, and no further, shalt thou stretch thy Fury, here shall thy Bounds be fixt*? We are not sure, my Lords, on what Element, and in what manner, a War, breaking out at this present Juncture, may be managed. It may be managed in a manner, my Lords, no way to the Advantage of *England*: In a manner, my Lords, that may render her Navy, her best and most natural Strength, quite useless for the Purposes that it is designed to serve: It may be managed, my Lords, in a manner that may cost *Great Britain* Millions, where it does not cost the other contending Power Thousands.

It has, my Lords, been rightly observed, that the Advantages which *Great Britain* acquires on the Continent prove, in the Event, only beneficial to her Neighbours. When we gain a Battle on the Continent, we gain it at the Expence of our own Blood and Treasure; and if we make a Conquest we find it almost impracticable to preserve it, for it proves either a perpetual Source of Animosities and Jealousies betwixt us and our Neighbours, or the Expence of maintaining it is much greater than the Advantage of possessing it. From this short View, my Lords, of the Interests of this Nation, and what may farther occur to your Lordships, I cannot doubt but you are sensible of the Wisdom of his Majesty's Measures; and that you perceive how dangerous an Expedient it had been, if, in order to procure Satisfaction for our Wrongs, we had entered upon immediate Action, and put that Satisfaction upon the Event of a doubtful War, without first endeavouring to obtain it by a safe and honourable Peace: For these Reasons, my Lords, I shall conclude with making this Motion to your Lordships:

1. That an humble Address should be presented by this House to his Majesty, to return his Majesty our humble Thanks for his most gracious Speech from the Throne.

2. To declare, that, amongst the many convincing Proofs, which his Majesty has given of his paternal and unwearied Care of the Rights of his People, nothing can fill our Hearts with more grateful Sentiments, than that sincere and affectionate Concern, which he has so often declared, for the many Hardships and Injuries sustained by his trading Subjects in *America*. That the Honour of his Majesty's Crown, and the true Interest of his People are, and ever will be inseparable; and that as his Majesty has, on all Occasions, demon-

demonstrated to the World, that he has both equally at Anno 12. Geo. II. Heart, it was impossible for us, not to have the firmest Dependence on his Zeal and Vigilance, for their real Security and Preservation. 1738-9.

3. To declare, that the gracious Regard which his Majesty is pleased to express, for the Resolutions and Advice of his Parliament, is a great Instance of his Royal Goodness: And that though his Majesty's constant Desire, out of Tenderness to his People, to avoid involving these Kingdoms in the manifold Inconveniencies of War, must have inclined him to approve the beginning with more moderate Measures; yet we never entertained the least doubt, but that the true Greatness and Fortitude, which inspired his Royal Breast, would have induced him to exert his utmost Power, in vindicating and protecting our undoubted Privileges of Navigation and Commerce; and in doing Justice to himself and his Subjects, if the Conduct of the Court of *Spain* had made such Measures necessary.

4. To beg leave, on this Occasion, to offer to his Majesty our unfeigned Thanks for his great Goodness and Condescension, in acquainting us from the Throne, that a Convention was concluded and ratified, between his Majesty and the King of *Spain*, whereby Reparation was agreed to be made to his Subjects for their Losses, by a certain stipulated Payment; that Plenipotentiaries were appointed for regulating, within a limited Time, all those Grievances and Abuses which had hitherto interrupted our Commerce and Navigation in the *American* Seas; and that his Majesty would order the Convention and separate Articles to be laid before us.

5. To declare, that we should fall short of those warm Impressions of Gratitude, which we feel in ourselves, as well as be wanting in our Duty, if we did not return his Majesty our most thankful Acknowledgments for his Royal Care, in making use of the Confidence reposed in him, with no other view, but the general and lasting Benefit of his Kingdoms. That Reparation for past Injuries and Losses, and effectual Security for the future, founded in Justice, and warranted by Treaties, had been the great Views of his Majesty, and his Parliament, in that national and important Affair; and if those Purposes could be attained, without plunging the Nation into a War, it must give the truest Satisfaction to all his faithful Subjects, who could not but be as desirous to preserve the Peace, as they were able and ready to defend and vindicate their Rights, against the Encroachments of all Aggressors.

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1738-9.

6. And lastly, to declare, that we are deeply sensible how unbecoming and pernicious it would be, at any time, to suffer either Prejudices or Animosities to mix themselves with parliamentary Deliberations ; and that his Majesty's gracious Recommendation to us, particularly to avoid them at this important Conjunction, cannot fail to awaken in us a more than ordinary Caution on that Head. That *Great Britain* hath but, one common Interest, consisting in the Security of his Majesty's Person and Government, and the Welfare and Happiness of his People ; and that when his Majesty is pleased to exhort us to Unanimity, it is only calling upon us to unite for our own Preservation ; therefore, to beseech his Majesty, to accept the strongest and most affectionate Assurances, that we will zealously and cheafly concur in all such Measures, as shall be most conducive to those great and desirable Ends.

Lord *Holart*.

My Lords,

d *Hobart*.

Though I have never yet troubled your Lordships with my Sentiments on any public Occasion, yet I think the happy Prospect of Affairs given us, in his Majesty's Speech from the Throne, affords me the most favourable Opportunity of thus publicly expressing my Satisfaction with his Majesty's Measures. Therefore, my Lords, I humbly second the Motion the noble Duke has made.

Lord *Gower*.

Lord *Gower*.

My Lords,

Though I have all the Regard and Duty for his Majesty that every good Subject ought to entertain, yet I own that I cannot prevail with myself so far as to look upon what we just now heard delivered from the Throne, in any other Light than as the Dictates of a Minister. As such, my Lords, I must beg leave to consider and examine it, and I shall endeavour to do it with that Freedom and Candor, with which every Lord in this House ought to express himself upon Matters of so great Importance to the public.

To do this, my Lords, with more Perspicuity, it is necessary that I should review some of the Transactions that pass'd last Session upon the same Subject in this House. This is the more proper upon the present Occasion, as they seem to have been either forgot, neglected, or not understood in another Place. Your Lordships may remember that last Session, after the Merchants had fully proved their Allegations contain'd in their Petition to his Majesty, your Lordships came to some Resolutions ; these Resolutions, my Lords, I hope are now very proper for our Consideration, and hope  
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your Lordships will allow your Clerk to read them [*Hire Anno 12. Sep. II. the Clerk read the Resolutions.*]

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The Day, my Lords, when you came to these Resolutions, was the most joyful Day I ever saw in the Course of my Life: I then observed that Spirit revive among your Lordships, which gives Weight to all our Councils, and Dignity to all our Resolutions; nor, I think, did any Lord object to the most material Resolution, as it now stands; which is the first; a Resolution, my Lords, that is essential to the very Being of our Trade, as Trade is essential to the very Being of this Nation. By that Resolution, my Lords, we see that your Lordships were of Opinion, that a free and uninterrupted Navigation to and from every Place of his Majesty's Dominions, was the Right of this Nation; your Lordships were of Opinion, that such Navigation ought, upon no Account whatsoever, to be interrupted; you likewise found, that the *Spaniards* have interrupted it upon many Occasions, and that all Endeavours to procure Satisfaction had hitherto been useless.

These Resolutions, my Lords, spoke the Sense of this House upon that great Occasion; and the Sense of this House, give me leave to say, ought always to have great Weight; nay, in this Case ought to determine the Sense of those who consult in another Place: At least, my Lords, our Resolutions, while they stand in Force upon our Journals, are Rules to ourselves, and we can approve or disapprove of no Measure, but so far as that Measure is consistent with them. Now, my Lords, how does it appear to your Lordships, that they have either been understood or regarded in another Place? Can, my Lords, any Man in the Kingdom say, from the Speech we have just now heard, that one Tittle, one Iota of what appears to have been the Sense of this House at that Time, has been perform'd? Does it not confirm, my Lords, a very general Observation without Doors, that we have a Ministry which has neither Courage to make War, nor Skill to make Peace? We require a positive and express Security for our Navigation; we require ample Satisfaction for the Injuries the Subjects of this Kingdom have suffered, and we require Satisfaction for the Wounds that have been given to the Honour of this Nation. How are these just Demands answered by the Minister? (For your Lordships will please to observe, that I all along suppose, that the Speech we have now heard comes from the Minister.) We are told, my Lords, that a Convention is made with *Spain*, that she is to pay us a stipulated Sum for the Injuries our Merchants have received, and that the Decision of every thing else is left to Plenipotentiaries.

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But at the same Time we are neither told what this Convention is, what the stipulated Sum is, nor what particular Differences betwixt the Kingdoms, these Plenipotentiaries have to regulate. Is all this any Satisfaction to this House? Is it any Satisfaction to this Nation? Yet, my Lords, we are as it were called upon to approve of this Manner of Proceeding: We are called upon to approve of Measures that have been concerted and carried on with the Knowledge and Approbation, I believe, of few Lords in this House: A Measure which, tho' of the greatest Importance to the future Well-being of this Nation, has been ratified at a Time when, my Lords, he who is, in many Respects, besides that of his Birth, the second Person of this Kingdom, has no Access to his Majesty's Person! When the Heir of the Crown has no more Share in his Majesty's Councils, than any Lord who sits on the lowest Bench in this House!

I have the Honour, my Lords, to sit on the lowest Bench in this House, and I am sure I have not the Honour to have the smallest Share in his Majesty's Councils; yet, my Lords, that royal Personage has no more Share in them than I have. This I have mention'd, to shew your Lordships how cautious we ought to be in giving the smallest Degree of Sanction to such Measures, and to such Councils. But, my Lords, were not this the Case, it is very evident that the Conduct of the Ministry, since our last Meeting in this Place, as it appears even from the Speech we have now heard, makes it highly improper for us to agree to the Motion made by the noble Duke.

If the Sum stipulated by this Convention is no more than what it is generally given out to be, it bears no Proportion to the Injuries our Merchants have sustained. If the Proceedings of the Plenipotentiaries are to be on the Foot of Treaties now in Force, I will be bold to say, my Lords, that no Differences can subsist betwixt *Spain* and us, but those Plenipotentiaries may create; for the Treaties betwixt us are strong, clear, and express, impossible, my Lords, to be mended by any subsequent Negotiation. So that, my Lords, this Convention is, probably, like other late Masterpieces of our negotiating Policy, only an Expedient to gain Time; and tho' we cannot tell what its particular Terms are, yet we may venture to tell what they are not. No Lord here, who has not seen this Convention, as I own I have not, can say that it is such as puts the future Navigation of this Kingdom on a proper Foot to free our Merchants from all Apprehensions of being insulted, prey'd upon, and murder'd by their injurious Neighbours. He cannot affirm that the first, or any Stipulation in it, is answerable to the first Resolution

Resolution that this House came to last Year ; I mean an Act 12. Geo II.  
Exemption from all Stop or Search, on any Account whatsoever, to those Vessels who are in a lawful Way of Trade upon the open Seas. Neither can he tell us, my Lords,

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that the Sum stipulated is adequate to what our Merchants have suffered by the *Spanish* Depredations ; nor that an ample Satisfaction is made for the Insults and Indignities done to his Majesty and the Nation : And if Lords are in the dark as to all these Points, on what can they found their Approbation of the Address proposed by the noble Duke ?

On the other hand, my Lords, any Lord, tho' he has not seen the Convention, yet if he has heard the Speech just now delivered from the Throne, may venture to say what this Convention *is not*. He may venture to say, that it is not a definitive Treaty, whereby the Rights of Navigation and Commerce, which this House found this Nation was justly entitled to, are secured against all future Violations, and put beyond the Possibility of ever afterwards being infrin'd in Time of Peace. My Lords, if it is not such a definitive Treaty, if it is not to be attended with these Consequences, your Lordships Advice which was laid before his Majesty last Year, has been neglected, it has been despised. If this is the Case, my Lords, as in all Appearance it is, this is not a Time for us to come to the Resolution proposed by the noble Duke who made the Motion ; this is not a Time for us to make Compliments to the Crown, which may be the more dangerous, as they may mislead his Majesty into the Belief that this Measure is agreeable to the Sense of the People in general, because agreeable to the Sense of this House. This, I say, my Lords, would be a fatal Compliment, it would tend to give his Majesty such favourable Impressions of the Abilities of his Ministers, as again to entrust them with the Management of these great Affairs, upon which the Peace and Welfare of this Kingdom depend ; both which have already suffered so greatly in their Hands. Such a Proceeding might possess his Majesty and all the World, with an Opinion that we are weak, inconsistent, and inconsiderate in our Resolutions ; by our coming in one Session to Resolutions, and presenting them to his Majesty as the Sense of this House ; and next Session approving of Measures in which not only no Regard has been had to these Resolutions, but that are absolutely inconsistent with them.

But, my Lords, tho' I am entirely against our inserting any Words in our Address, that may give his Majesty and the Nation Reason to think that we are satisfied with the Measures pursued since last Session, yet I am not at all against



Anno 12. Geo. II. gainst any Expressions, however strong, that may evidence  
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Person. But these, give me Leave to say, are best consulted, by giving his Majesty to understand, from our Silence, as to that Part of the Speech that concerns the Convention, that we are by no Means satisfied with such a Measure; that we are resolved not to be satisfied with any thing less than an ample and express Renunciation from *Spain*, of all her Claims upon the Liberty of our Navigation, of all her Claims to any Part of our Territories, and of her Pretences to a Sovereignty in the *American Seas*.

I am far, my Lords, from entering now upon any Disquisition into the Terms which this Convention may contain; I have already profess'd myself entirely ignorant of them, and I wish they may prove in the Event honourable to the Nation. The only Consideration that now lies before us is, how far, by what appears from the Speech we have now heard, we have any Grounds whereon we can found an Approbation of the Measures taken by the Ministry, with regard to *Spain*, since the last Session. And tho', my Lords, I have given my Opinion as to that Matter, yet I have chiefly confined my Arguments to the Inconsistency which appears betwixt the Resolutions now read, and our present Situation with *Spain*, so far as it can be gathered from his Majesty's Speech.

I shall now take the Liberty to trouble your Lordships with some other Arguments, arising from other Circumstances.

The Parliament, towards the Close of last Session, thought proper to strengthen his Majesty's Hands, by voting a considerable Addition to the Sea-Forces. In Consequence of this Resolution, Preparations were made, the Trade of the Nation was laid under very great Disadvantages and Encumbrances, and the Nation itself put to the Expence of upwards of 500,000 *l*. All this, my Lords, was cheerfully borne; our Seamen were glad of an Opportunity to revenge their Injuries, our Merchants were pleased with the Prospect of repairing their Losses, and the Nation in general was fond of an Occasion to vindicate her Honour. The least, my Lords, that could have been expected from such mighty Preparations, from such happy Dispositions, was Reparation of past, and Security from future Injuries; or if we fail'd in that, to have known the worst, to have fallen like Men, with our Swords in our Hands, and no longer to have continued in this political Purgatory betwixt Peace and War, which gives us every thing to fear, which leaves us nothing to hope. But, my Lords, instead of being put out of Uncertainty, we are put into greater Uncertainty than ever;  
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both by the Silence of his Majesty with regard to the Terms of this important Negotiation, and by the doubtful Event that may attend the Councils of his Ministry. Thus, my Lords, in effect, we are certain of nothing, but of our being in a worse Situation than ever; tho' uncertain as to the particular Circumstances attending that Situation. We are certain that the Public is 500,000 *l.* the poorer than it was at the End of last Session, and at the same time has not reaped one Advantage from so vast an Expence. These, my Lords, I humbly conceive, are not very inviting Considerations to induce us to return Thanks for the Speech from the Throne in the Terms proposed by the noble Duke.

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I shall trouble your Lordships only with a few more Observations. As Affairs have been managed betwixt us and *Spain*, all the War that we have had has been but a Paper-War; and, my Lords, who has had the Advantage in that War, is no hard Matter to determine. But, my Lords, had the War been managed with Swords instead of Pens, and had we spoken from the Mouths of our Cannon instead of our Ambassadors, I dare boldly to pronounce the Advantage would have been on the other Side. Not that we are destitute of as good Heads as they have in *Spain*; but, my Lords, it has not been our good Fortune to have them employed in this Negotiation. We have not yet, my Lords, had any Reason to think that the Heads of our Ministers are equal to the Hearts of our People: Therefore, my Lords, give me Leave to say, we have trusted too long to the Abilities of the first, and too much disregarded the Sense of the last. This Consideration, my Lords, gives me great room to apprehend, that, if we should proceed further in the way of Negotiation, the Match is by no Means equal; we have ever yet been Losers at that Game, and I think it is now high Time for us to alter our Play; tho' I doubt, my Lords, our Affairs are in such a Way, that it is beyond the Reach of the ablest Heads to work out our Deliverance, any other Way than by a Change of Measures, and endeavouring to regain by War, what we have lost by Negotiation. For these Reasons, my Lords, I am for leaving out all that remains of the Address proposed, after the Words [*Vigilance, &c.*] for their real Security and Preservation.

The Duke of *Newcastle*.

My Lords,

The Terms of the Address, proposed by the noble Lord Duke of *Newcastle*, who spoke first, are drawn up with such unprecedented Caution, that it is surprizing to me that it should meet with any Opposition. At the same Time, my Lords, the Reasons which that noble Lord made use of to support the Address he moved

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moved for, were so strong and so powerful, that it is equally surprizing that the noble Lord who spoke last should not either own his being convinced with their Force, or attempt to give them some Answer. I am sure, my Lords, if they could have admitted of any Answer, the noble Lord was very capable of giving it; and, I believe, none of your Lordships have any Reason to doubt of his being willing.

I shall however, my Lords, endeavour to answer those Parts of my noble Lord's Speech who spoke last, that are founded on Arguments drawn from what his Lordship seems principally to insist on, the Inconsistency of our resolving on an Address in the Terms proposed, by the noble Lord who spoke first, with the Resolutions we came to in the last Session. I shall then shew the Consistency of the Address proposed with these Resolutions: And, lastly, endeavour to obviate the Objections, that were rather hinted at than insisted on, by my noble Lord who proposed the Amendment.

The Resolutions, my Lords, that you have heard read, were the Result of a very candid and impartial Examination of the Treaties upon which our Rights of Navigation and Commerce in *America* are founded; and through the whole Course of the Debates that happened last Session on this Subject, it was always understood that this House reposed a full Confidence in his Majesty; that the Confirmation of these Rights by *Spain* was to be the Ground-work of all our future, as, give me Leave to say, they had been of our past Negotiations with that Court. At the same time, my Lords, it was understood, that the House was of Opinion that his Majesty was to do all he could to get these Rights confirmed by *Spain*, before he proceeded to the Extremities so warmly insisted on by my noble Lord. The first Resolution is upon a Fact, that we have no reason to believe has been either neglected or misunderstood by the Ministry. I am not at Liberty to inform your Lordships of the particular manner in which this is guarded by the Convention, nor would it be regular in me to do it: I shall therefore confine what I have to say on that Head to what his Majesty has been pleased to hint in his Speech from the Throne; and endeavour to shew from thence the Propriety of the Terms in which the proposed Address is conceived. This, my Lords, I hope will be thought a fair and an equitable Way of reasoning, since in all Deliberations we are obliged to act according to the Evidence that appears: And the only regular Evidence we can yet have of its being proper or improper for us to agree to the Address without the Amendment, must arise from that Part of his Majesty's Speech which regards this Measure.

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My noble Lord who spoke last, reason'd all along upon a Supposition, that this House understood that his Majesty was to declare War with *Spain* immediately upon presenting our last Address: But it was quite otherwise; for if a Treaty could be concluded upon the Foot of what this contained, all the Ends which this House propos'd by presenting that Address were gained. How does it appear, my Lords, that this was not the principal Consideration that enter'd into the Negotiations for concluding this Convention? Does it appear from his Majesty's Speech? No, my Lords, his Majesty has been pleas'd to inform us, that the Convention is for settling all Matters in Dispute in such a manner, as may for the future prevent and remove all new Causes and Pretences of Complaint, by a strict Observance of our mutual Treaties, and a just Regard to the Rights and Privileges belonging to each other.' If we are to reason on the Fitness of this Measure, my Lords, from these Words, there never was any Measure more consistent with, and more consequential of the Sense of this House. We never intended to dictate to his Majesty the Steps that were proper to be taken on the Commencement of this Negotiation; it was enough, it answer'd all our Purposes, if our Rights were put on such a Foot, as to render it impossible for the *Spaniards* to have any Pretext for continuing their Depredations and Violences. If the definitive Treaty which is to follow upon this Convention, has regard to, and is founded on the Treaties now in Force betwixt the two Crowns, as is strongly implied by his Majesty's Words, it is as much as the most sanguine Lord in this House can, with any Colour of Reason, insist on. Your Lordships first Resolution, which has been read by your Clerk, is founded on an Observance of those Treaties, and the Observance of those Treaties is the only true Security which we can have for our Commerce and Navigation. Therefore, my Lords, I cannot see the least Foundation for inferring any Inconsistency betwixt this Convention, so far as it appears from his Majesty's Speech, and your Lordships Resolutions of last Session.

I shall now, my Lords, take the Liberty to consider the Words of the Address propos'd by the noble Duke who spoke first. Your Lordships there declare, 'That you offer his Majesty your Thanks for acquainting you from the Throne, that a Convention is concluded, and likewise for his Royal Care in making use of the Confidence repos'd in him with no other View, but the general and lasting Benefit of the Kingdom.' You then proceed, my Lords, to say, 'That Reparation for past Injuries and Losses, and effectual Security for the future, founded in Justice, and warranted by Treaties, have been the great Views of his

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‘ Majesty and the Parliament in this national and important ‘ Affair.’ Can any Thing be more unexceptionable ? Can any Thing be more congruous with the Sense which this House has always entertained of this Matter, than these Expressions ? There is implied in them no blind Approbation of a Measure which you know nothing of, and which precludes any of your Lordships from making what Objections you please to the Convention, when it may come before you. If your Lordships should then find, that Reparation for past Injuries, and Security for the future are not sufficiently provided for by that Convention, your Lordships are so far from being tied up from objecting to it, that these very Expressions are so many Rules, which you have already laid down for judging of its Merits, and by them you give the Nation and the Ministry to understand, that you are resolved to approve or disapprove of this Measure, in Proportion as you shall find it agreeable to, or inconsistent with these Sentiments.

I have heard it laid down as a very good Rule, whereby one can judge of the Fitness or Unfitness of any Proposition, to invert the Meaning of the Words, and then to compare the real with the inverted Sense, and if the latter is highly absurd, it is a strong Presumption in favour of the former. If that Rule were to be applied in this Case, how would the last Sentence which I repeated from the noble Duke’s Motion stand ? Why, my Lords, we should then declare, that Reparation for past Injuries, and Security for the future, were not to be founded on Justice, and warranted by Treaties ; we should then declare, that Reparation for past Injuries, and Security for the future, founded on Justice, and warranted by Treaties, were not the great Views of his Majesty and of this House. What a String of monstrous Absurdities should we have in such Expressions !

My noble Lord who spoke last, was pleased to find Fault with this Convention, because it is not a definitive Treaty. Really, my Lords, I should have been as glad as any Lord in this House, if a definitive Treaty could have been brought about with *Spain* before this Time : But, my Lords, whoever considers the Complication of Demands on both Sides, the Multitude of intricate Facts that were to be examined into, and the various Pretensions to be adjusted, must be of Opinion, that there is more done since last Session, than could have reasonably been expected, especially as we had to do with *Spaniards*, a People not at all famous for their Dispatch in Business ; and, my Lords, tho’ this is no definitive Treaty, yet it lays a very solid and ample Foundation for such a Treaty.

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In any definitive Treaty that should have been, or is to be made, two Things are principally to be regarded : The first is, Reparation for past Injuries ; the next, Security for the future. As the first immediately regards our suffering Merchants, his Majesty, like the true Father of his People, chose to have their Interests taken Care of even previous to those of his own Crown. In this respect, my Lords, the Convention is a definitive Treaty ; since, by it, the Account between *Spain* and *England* is adjusted, and the Sum to be paid to our Merchants, stipulated. The other Part, which a definitive Treaty must consist of, is Security for the future. This, my Lords, as appears from his Majesty's Speech, is as fully provided for, as it is possible to be in any Act that is not definitive. Plenipotentiaries are to be appointed, the Plenipotentiaries are in a limited Time to finish their Negotiation ; and the Ground-work of this Negotiation is to be a strict Observance of mutual Treaties, and the just Regard to the Rights and Privileges belonging to the two contracting Powers. Thus, my Lords, the Foundation for such a definitive Treaty, as every Man in this Nation ought to wish for, is laid ; and, at the same time, we have an Earnest of the Sincerity of *Spain*, in finishing such Treaty, by her agreeing to pay the stipulated Sum to our Merchants. For, my Lords, if no definitive Treaty is to follow upon this Convention, we have gained this vast Advantage, that the Demands of our Merchants are satisfied. Besides, my Lords, the allowing this very Satisfaction implies all that we can claim from any future Treaty. For to what Purpose is this Money paid ? It is paid to satisfy our Merchants for those Damages which they have sustained in Violation of the Treaties subsisting betwixt *England* and *Spain*, and our Rights of Navigation. My Lords, if the Court of *Spain* did not own that these Treaties have been violated, that these Rights have been infringed, we cannot suppose that she would have paid Damages for such a Violation. If she entertains any hopes that our Plenipotentiaries may give them up, this is the most likely Way in the World to disappoint her. She has now owned herself guilty, and gives us an Earnest of her Sincerity in concurring in such Measures as may prevent any future Injuries or Differences betwixt the two Nations. Thus, my Lords, I have endeavoured to explain to your Lordships what the Convention is, as the noble Lord was pleased to explain what it is not ; and, as I have all along kept in my Eye the Words of his Majesty's Speech, I hope your Lordships will not find that I have exaggerated any of its Advantages.

My noble Lord who spoke last was pleased to condemn the whole of the proposed Address, except the first Paragraph,

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but did not point out any particular Passages that are exceptionable: But, my Lords, it is no hard Matter to guess at those Passages which he thought most so, from the Tendency of his Lordship's Speech. The Address proceeds to assure his Majesty, 'That if these Purposes, Reparation and Security, can be attained without plunging the Nation into a War, it must give the truest Satisfaction to all his faithful Subjects.' Can any Man, my Lords, deny the Justness of this Proposition? Is it not as expressive of Tenderness for the Rights of the Subject, as of Duty to the Person of his Majesty? A War, my Lords, wantonly entered upon, might soon be attended with worse Consequences to the Interests of our Merchants, and to the Nation in general, than all the Depredations we have yet suffered from *Spain*. And tho' it should become necessary, yet it never can be eligible. It is therefore surprizing to hear some amongst us, who are perpetually complaining of the Decay of Trade, and the Exorbitancy of Taxes, perpetually insisting upon Measures that must utterly ruin the one, and greatly enhance the other. Therefore, my Lords, it is just, it is prudent in us, to let all *Europe* see, by our Address to his Majesty, that we prefer an honourable Peace to an uncertain War; This will remove all Suspicion from other Powers, of our entertaining any ambitious Designs to dispossess *Spain* of what has been granted to her by so many express Treaties. We thereby make it a defensive War on our Side, and deprive them of all Pretext to call in their Allies to their Assistance; and indeed what Allies will assist in a War undertaken to support Rapine and Injustice?

But, my Lords, while we talk of these Measures, we absolutely leave the Subject of this Debate; a Fault, my Lords, which while I blame in others, I am very apt to commit myself. The Business we are now upon, with all Submission, is not an Enquiry into the Conduct of the Ministry since our last Meeting, but how far it may be proper in us to agree to the Amendment made by the noble Lord who spoke last. His Lordship, in Support of his Amendment, did not think fit to point out any particular Improprieties in the Address moved for by the noble Duke; he did not shew us wherein any of its Expressions tended to approve of the Measures of the Ministry, that have not yet come to the Knowledge of the Public. But my noble Lord thinks that all Expressions of Thanks, all Assurances of Duty to his Majesty, ought to be reserved till we see how well his Ministers have deserved. My Lords, an Address of Thanks for a Speech from the Throne has always been looked upon as Matter of Form, as a Compliment paid to the Crown;

and your Lordships have never thought it necessary to confine your Assurances of Duty and Zeal to the Information you received of a Minister's Conduct since your last Meeting. When his Majesty told you that a Treaty had been made during your Recess, you never thought it necessary to be informed of the particular Contents of such a Treaty, before you agreed to the Resolution of presenting Thanks to his Majesty for the Care he had taken in making such a Treaty, and the Regard he had shewed to the House by informing them that such a Treaty was made. There is an Instance of this upon your Lordships Journals, the first Session after the Treaty of *Seville* was concluded. The Affairs of *Europe* were at that Time in a very ticklish Situation, and that Treaty was to determine a great many important Points in dispute betwixt us and *Spain*: Yet, notwithstanding all this, your Lordships did not think it absolutely necessary to have that Treaty communicated to the House before you came to a Resolution of an Address of Thanks to his Majesty on that Subject. My Lords, you voted an Address in much stronger Terms than any contained in the Address now under your Lordships Consideration; but it was never meant to preclude any of your Lordships from making your Objections to the Treaty when laid before you. I could bring Multitudes of Instances of this Kind; but think this one sufficient for my, present Purpose.

The noble Lord who spoke last, said, and indeed he said it very justly, that the Speech from the Throne was to be considered as the Speech of the Minister. My Lords, it is so; and I believe it ever will be so, as long as we have a King, and as long as we have a Minister. But, my Lords, the Addresses we return to such Speeches can never be looked upon as any Compliment to the Minister, or giving any Sanction to his Measures, because they are full of Expressions applicable to Majesty alone; and it has ever been thought necessary to insert such Expressions, that the Nation and all the World may have reason to look on the Crown and the Parliament as but one Body, acting for the common Good of the Nation. If, my Lords, there ever was a Time when a right Understanding betwixt his Majesty and his Parliament was necessary for the Good of the Public, this is that Time. If ever there was a Time wherein it might be improper for us to abate any of our Expressions of Duty and Zeal, it is now. And give me leave to add, my Lords, that there never was a Time wherein your Lordships had less reason to make any such Alterations in your ordinary Forms of Proceeding.

Having thus, my Lords, I hope, shewed the Consistency of

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of the Address moved for by the noble Duke who spoke first, I shall beg leave now to say a few Words in answer to some Things that fell from my noble Lord who spoke for the Amendment. His Lordship was pleased to think it extremely odd, that we have reapt no other Advantages besides this Convention from the great Addition with which we strengthened his Majesty's Hands. Great Preparations were made, says the noble Lord, the Nation was put to great Expences, and now we are obliged to take up with a Convention instead of a Treaty. My Lords, give me leave to say that we are quite in the Dark what that Convention may be; the noble Lord will not condemn a Thing unseen, unheard. I have, I hope, proved to your Lordships, from the Words of his Majesty's Speech, that we have all the Reason in the World to presume the best of this Convention, nor do I think the noble Lord has advanced one Argument that can prove the contrary. As to the Preparations we have made, and the Expences we were at, your Lordships Judgment of them can be determined only by the Effects they have had, and your Lordships can only know what these Effects are, when the Convention is laid before you, which will be in a very few Days. In the mean time, my Lords, I will be bold to say, had it not been for the Fleet we fitted out, and the vigorous Preparations that we made, the *Spaniards* would never have been brought to treat, they could never have been brought to allow of a Reparation of the Damages our Merchants have sustained. And, my Lords, I will say farther, that this Reparation, that this owning themselves to have been in the Wrong, was a more happy Effect of an Armament, than ever was known on the like Occasion. Search our Histories, my Lords, look back into all the Treaties that have been made betwixt us and any other Nation in the World, or betwixt any two Nations treating together, we shall find no Instance where the offending Nation not only admitted herself to have been in the Wrong, but actually to have paid Damages for that Wrong. So that, my Lords, upon the whole it is surprizing, that the noble Lord who was for the Amendment, should tell your Lordships, that we are certainly now in a worse Situation than ever. Is not the contrary evident? Have we not brought the *Spaniards* to treat? Have we not laid it down as the Foundation of a future Treaty, that they are no longer to act upon the same Principles, and in the same Manner, that have given us so just Grounds to complain? And as this is a sealed Preliminary, I should be glad to know of any noble Lord, what Treaty concluded with *Spain* can be disadvantageous to this Kingdom, where such

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a Preliminary is laid down. I am sorry I have detained your Lordships thus long upon a Subject which I believed could have admitted of very little Debate; but I thought the Station I have the Honour to serve his Majesty in, required me to do all that I could to clear up any Doubts, and to remove any Objections, which Lords might entertain against the Address, as moved for by the noble Duke.

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The Duke of Bedford.

My Lords,

There is not any one Reason that has been advanced by the noble Duke who spoke last, that has not had a quite contrary Effect upon me, than what it seems to have upon the noble Duke. His Grace thinks that we ought to approve of this Convention, because we are in the Dark about it; my Lords, that is the very Reason why I think we ought not to approve of it: I think we have been kept too long in the Dark already, with regard to every Step of this long and intricate Negotiation with *Spain*. Perhaps, my Lords, if we had been kept less in the Dark some Years ago, the Nation might have seen its Interest more clearly; we could then perhaps have interposed with greater Dignity, with greater Weight, than, I am afraid, we can now. But I hope it is not yet too late; the Convention which his Majesty has been pleased to inform us of from the Throne, can never be thought to have received its finishing Stroke, but from the Approbation or Disapprobation of both Houses of Parliament. We have, my Lords, before this Time, rescued the Nation from Ruin, by rejecting Measures that had received the last Hand from a Ministry, perhaps a corrupt Ministry indeed, but a Ministry that had the same Power, the same Authority for what it did, that any subsequent Ministry can pretend to have. Your Lordships, no doubt, know that I mean the famous Treaty of Commerce with *France*, which was thrown out by the Parliament of *Great Britain* about the Time when the Treaty of *Utrecht* was concluded.

I shall willingly agree with the noble Duke who spoke last, in thinking that our Unanimity is the best Means of securing the Nation against all the Attacks either of her open or concealed Enemies: But that Unanimity, my Lords, can only be brought about by every Lord in this House contributing all that is in his Power towards discovering by what means it has happened, that the solemn Resolution of this House, which was laid before his Majesty, has been neglected, wilfully neglected, by the Negotiators of this Convention. Can it be expected, my Lords, that we shall be unanimous in our Approbation of a Measure that carries along

Annor 12. Geo. II.

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along with it such evident Marks of Disrespect to Parliament, and thereby lays the Foundation of Measures that may put it out of our Power ever after to be of Service to the Nation? My Lords, I can never be persuaded that if the Ministry had got from *Spain* an ample Renunciation of all Pretence to a Right of searching our Ships on the open Seas, they would not have informed the Nation of so considerable a Point gained; we should have heard of it in all Companies, in all our News-Papers; and, my Lords, it would have been fully and explicitly set forth in his Majesty's Speech. Therefore, my Lords, even his Majesty's Silence on that head is to me a sufficient Proof, that no such Renunciation has been obtained; nay, to me it is a Proof, that the *Spahiards* insist on their Claim to search our Ships, and that we have even submitted to have it discussed by the Plenipotentiaries, who are to meet upon the definitive Treaty. This is so evident a Contempt of the Parliament's Advice, as if two Plenipotentiaries were better Judges of our Rights of Navigation and Commerce, than both Houses of Parliament, that it is surprizing to me, that even an Attempt should be made to excuse it, much more to defend it.

My Lords, when I heard that a Convention was concluded, I imagined that the definitive Treaty, which is to follow on that Convention, would not be referred to Commissaries; and that some other Name would be invented for these Gentlemen's Powers. We had enough of Commissaries at the Treaty of *Seville*; that Treaty, my Lords, was, in the main, little better than a Convention; since, as in the other Conventions, a great deal was left to the Decision of Commissaries. None of your Lordships are ignorant of the Progress these Commissaries made in settling the Affairs referred to their Decision; and that, after some Years expensive and fruitless Negotiations, they left them in a more perplexed State than they were before. The Points left to their Decision were not indeed of such Importance, as those which by this Convention seem to be left to Plenipotentiaries: But, my Lords, can we easily imagine that Plenipotentiaries will be more expeditious than Commissaries? I am apt to think, my Lords, that they will be a great deal more slow, because the Points referred to their Decision are of a much weightier Nature. Therefore, my Lords, as we have found already by Experience, that an eventual Treaty, if I may call it so, has been so detrimental to the Nation, I think it would be highly improper for us to approve of our Ministry's concluding another, which we have great Reason to think is of a still  
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more pernicious Nature. My Lords, I would not be understood as if I were absolutely for condemning the Convention before we know what it is; but I humbly conceive, that there is a great Difference betwixt not giving a Sanction to a Measure, and utterly rejecting it. By our agreeing to the Address as amended, we only give the Ministry to understand, that we are surprized they should venture on a manner of negotiating, that has been already so detrimental to the Nation: But we don't at all profess, that we are resolved to disapprove of it, if, contrary to what we apprehend, there should be some peculiar Advantages in this Negotiation, that may reconcile it to the Interests of the Kingdom. This, my Lords, is the Light in which I view the Opposition that is made to the Address proposed by the noble Duke. And, my Lords, by agreeing to the Amendment, we don't go the Length that Parliaments used to go in former Times. Formerly, my Lords, when a Speech was made from the Throne, a particular Day was appointed by Parliament for taking that Speech into Consideration, and in the mean time a Committee was appointed for enquiring into, and drawing up a State of the Grievances of the Nation. And, my Lords, these Grievances were presented to the Throne before they returned their Address of Thanks, which was always qualified according to the Hopes which the Crown gave them of redressing these Grievances. My Lords, no Man who understands the History of *England*, will say that our Forefathers were either wanting in the Duty they owed to the Prince, or in their Concern for the Liberty of the Subject. And, my Lords, though the Liberty of the Subject may now seem more secure from the Encroachments of the Crown than it was formerly, yet the Example of our wise Ancestors cannot be too closely imitated, especially when we are apprehensive of any of those Grievances under which they laboured. For these Reasons, my Lords, I am for the Amendment.

Earl of *Scarborough*.

My Lords,

I have considered the Address proposed by the noble Earl of *Scarborough* Duke, with all the Exactness, with all the Impartiality I am capable of. I have the greatest personal Regard imaginable for the noble Lords who have spoke in this Debate: And, my Lords, were my Opinion to be determined by private Views only, my Esteem for the Lords who have spoken on this Question is so equal, that I should remain neutral: But when I either consider this Address by itself, or compare it with Addresses upon the like Occasions, I

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cannot but be of Opinion, that our agreeing to it with out any Amendment, is no more than a bare Acknowledgment of Duty to the Person of his Majesty, and is even inferior to the Assurances which this House has often given to the Crown at the Opening of a Session.

My Lords, when the Convention shall be laid before your Lordships, no Lord here shall be more impartial and sincere in declaring his Sentiments upon it than I shall be. And, my Lords, if I thought there was the least Expression in this Address without the Amendment, that precludes me from delivering myself afterwards with Freedom, no Lord should be more hearty than I for the Amendment. But, my Lords, I can't see any one Expression in the Address without the Amendment, that can be wrested into an Approbation of the Convention. We there declare, in general Terms, what no Lord can deny; we declare that if the Ends of Peace can be procured without plunging the Nation into a War, that such a Conduct is certainly eligible; we express our Gratitude to his Majesty for his Endeavours to obtain these Ends by the more moderate Measures of Negotiation. Where, my Lords, is the Compliment to the Minister here? His Majesty has told you that he has endeavoured to obtain a Peace that will answer the Expectations of the Kingdom: We thank his Majesty; for what? Not for that Peace; but, for his endeavouring to procure such a Peace: For if it is not such a Peace, my Lords, we are still at Liberty to object to it, when it is laid before us. If a Man tells me that he had done his utmost to serve me in such or such an Affair; if I believe that Man to be an honest Man, I am bound to thank him for his good Intentions, even though I should be sensible at the same time his Zeal was mistaken, nay though I may afterwards find that it has been prejudicial to my Interests.

Your Lordships thank his Majesty for acquainting the House that a Convention is concluded, and that it shall be laid before the House. My Lords, I am sure there is nothing here that looks like Incense to the Minister. Your Lordships know that the Power of Peace and War is in the Crown, as the noble Lord who spoke last observed; and that our Constitution always understands that the Crown has a Right to make either, without the Participation of Parliament. No wise King will indeed venture upon this; but, my Lords, no dutiful Parliament will refuse to thank such a King for his Condescension in thus making the Parliament as it were Partners in his Prerogative.

In the last Paragraph, my Lords, we declare that we will endeavour to avoid all Heats and Animosities. Can any thing

thing be more desirable, my Lords, than Unanimity ? Can any thing be more pernicious to public Deliberations than Discord? In this natural, this simple Manner, my Lords, I view this Address. I have no farther Aim in giving my Voice for it, than to express my Duty and Regard to his Majesty's Person. I don't know what Apprehensions other Lords may entertain, but I see no Grounds for any ; and I should be sorry, my Lords, if our Jealousy of the Ministry should ever make us violate our Duty to the Crown. I am far from disapproving of such a Jealousy, while it is kept within proper Bounds ; but, my Lords, when it suggests imaginary Fears, and groundless Apprehensions, such a Jealousy may be productive of as fatal Consequences, as too great Confidence. My Lords, I own I am not deep-drawn in Politics ; therefore I cannot answer for the Uses which the Ministry may make of this Address if agreed to without the Amendment : But, my Lords, I here openly declare before all your Lordships, tho' I am for agreeing to this Address without the Amendment, that I reserve to myself the Privilege of speaking my Thoughts with regard to this Convention, in as full and explicit a Manner, as I must be supposed to have done if this Address had never been moved for, nor agreed to. My Lords, perhaps, when the Convention comes to be laid before us it may be found that, tho' I differ from some noble Lords with regard to this Address, yet that I do not differ very widely from them with regard to my Sentiments about the Convention. Therefore, my Lords, I could heartily wish that all your Lordships would view this Address in the same Light that I do. This, my Lords, will be the means of answering the just Expectations of his Majesty, and letting all the Kingdom see that no Consideration shall divert us from a Pursuit of the public Good.

The Earl of *Chesterfield*.

My Lords,

The Esteem and Affection I have for his Majesty, and the Earl of *Chesterfield*. Regard I have for every thing that may any way contribute towards establishing him in the Hearts of his Subjects, are so well known, that I need not trouble your Lordships with any Professions on that Head ; and if there were nothing in the Address now proposed, but Expressions of Duty towards him, and Zeal for his Service, I should be far from desiring or agreeing to any Amendment ; but the Duty I owe to my King, the Regard I have for the Honour of this House, and the Resentment every Man ought to shew for the Injuries his Country has received, forbid my agreeing to the Proposition as it now stands.

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I shall agree, my Lords, that those Expressions, which may be thought to relate to any Part of our late Conduct, are very general, more than ordinary Care has been taken to make them so; but even this is an Argument for the Amendment proposed. So great Caution is a Sort of Proof that Matters are not all right; it shows a Consciousness of some Misbehaviour, which ought to give us Suspicion; and that Suspicion ought to make us avoid inserting any thing, tho' in the most general Terms, that may relate to our late Conduct. In the Proposition as it now stands, there are many Paragraphs that, notwithstanding their being addressed to the King, must relate to the Conduct of our Ministers; for whatever is done, we must in this House suppose to be done by the Ministers; and therefore, if we make use of any Expressions that may look like Compliments upon our late Conduct, tho' they be addressed to the King only, they will, without doors, be looked on as an Approbation of what has been done by the Minister. They will be represented as such in a Place, where, from this House, nothing should come that may in the least misguide.

The Paragraphs that relate to our late Transactions, are indeed so general, and the Turns of Expression so artfully and cautiously chosen, that, upon any ordinary Occasion, I should not perhaps have made an Objection; but, my Lords, the present Emergency is the most extraordinary, the most important, that has ever happened since I have had the Honour to sit in this House. Our Trade, our very Being, is deeply concerned in every Resolution we can come to during this Session of Parliament. The only profitable Branch of our Trade, I am afraid, the Branch upon which all the other, and consequently the Being of this Nation, depends, is now at Stake. It has been in Danger for many Years; but it is now upon the Brink of Perdition, and can be recovered from the Precipice upon which it stands, only by the Integrity, the Wisdom, and the Steadiness of this House.

I shall not pretend, my Lords, to know any thing of the Convention we have lately, it seems, accepted of; I say, my Lords, I shall not pretend to know any thing more of it, than what his Majesty has been pleased to impart to us, by his Speech from the Throne; but from what he has told us of it, I must think it ought, I hope it will be censured. By his Majesty's Speech he has told us positively what is done, and negatively, what is not done. He has told us, we have got the Promise of a stipulated Sum, for he does not say that this Sum is either paid, or secured to be paid; but he has likewise told us, that we have got nothing else;  
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All the rest of our Disputes with *Spain* are referred to Commissioners, who are now to be called Plenipotentiaries. They are to have a higher Title than they had formerly ; consequently, I suppose, they must have higher Salaries ; and this will of course make them draw their Negotiations out to a greater Length.

Ann. 11. Geo. II.  
1738-9.

This, my Lords, makes the Case very different from what it was with relation to the Treaty of *Seville*. His Majesty, in his Speech from the Throne, after the Conclusion of that Treaty, told us nothing we could have the least Pretence to find Fault with. He then told us, we had got every thing we could wish for ; and he certainly thought so ; but we soon found that he had been misinformed, and that we had been too rash. Now he is so far from having told us, we have got every thing we could wish for, that he expressly tells us, we have got what, I think, may properly be called nothing ; what I am convinced will appear to be so. There is therefore no Precedent for what is now proposed ; and if there were, there are but few late Precedents, that can be much insisted on as good Rules for our future Conduct.

Reparation for the Losses our Merchants have sustained is, 'tis true, my Lords, an Article which we ought to have insisted on ; but it is the Article of the least Consequence, and the only Article which could admit of a Discussion before Commissioners or Plenipotentiaries, call them which you will. The other Articles in Dispute between us and *Spain*, are all of much greater Consequence ; and they are of such a Nature, as cannot admit of a Discussion ; because they must be expressly granted, or peremptorily denied. Yet this Article about Reparation, his Majesty has told us, is the only Article that is settled by this Convention ; so that what cannot admit of a Reference, we have referred ; and what could not in its own Nature admit of a just and immediate Determination, we have determined. But how, my Lords, is it determined ? not at all to the Honour or Advantage of *Great Britain*, if I am rightly informed. We have, it seems, made a lumping Bargain of it. Our Merchants claimed 430,000 *l.* they had really been robbed of by the *Spaniards* ; without reckoning the Loss they sustained by the Interruption of their Trade, by the high Premiums they paid upon Insurance, and many other Losses that have been occasioned by these Depredations. They claimed this Sum as the Value only of those Ships, that had been actually sent out by them, and seized or plundered by the *Spaniards* : They claimed nothing for the Ships they might, and would have sent out, if it had not been for the Interruption they met



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met with in their Trade; nor did they claim any thing for the high Insurance, and other extraordinary Charges, they were put to upon those Ships that had the good Luck to escape. A Computation of this Kind, would have made their Claim amount to double the Sum; yet this great Claim, it seems, we have lump'd with the *Spaniards*, and by this Convention have accepted of 155,000 *l.* in full for the Whole; and even this Sum, notwithstanding this most extraordinary Abatement, is not to be paid to our Merchants by the *Spaniards*, but by ourselves. Is this, my Lords, to be called a Reparation? And yet this Reparation, such as it is, has cost us at least 4 or 500,000 *l.* extraordinary Charges, since last Session of Parliament. If this be a Reparation; I hope we shall have no more such; two or three such Reparations would undo us.

From hence your Lordships will see, we have no great Reason to approve of what his Majesty has told us we have got; and now with regard to what his Majesty has told us we have not got: Are Plenipotentiaries to regulate the searching of our Ships upon the high Seas? I hope no *British* Plenipotentiary will dare to regulate, what this Nation must never, nor in any Shape, admit. No Search, my Lords, is the Word with every Man of common Sense in the Kingdom. It was the Sense of both Houses, last Session of Parliament; and in the Resolution your Lordships then came to upon this very Head; you have declared, that the searching of our Ships on the open Seas, is a Violation of the Treaties subsisting between the two Crowns. No Search was therefore the chief Article we ought to have insisted on, in any new Treaty between the two Crowns. Without this we can have no Security, we can have no Reparation for the Insults and Dishonour the *British* Flag has met with. They have lately set up a Pretence to search our Ships upon the open Seas: The very setting up of such a Pretence, is an Affront put upon us by them; but to conclude any Treaty or Convention with them afterwards, without an express Disavowal of all Pretences of that Kind, is putting a new and a much greater Affront upon ourselves. This we have done: His Majesty has told us we have done it. Is it possible that such a Step can escape the Censure of Parliament?

This, my Lords, is the Case now before us. We are not to judge of, or condemn the Convention, before we know what it is. His Majesty has in his Speech told us what it is. He has told us that something is done, which ought not to be done. He has told us that a Point of the utmost Consequence to our Trade and Navigation is referred to

to the Regulation of Commissaries, which, in its own Nature can admit of no Regulation. This is what every unprejudiced Man in the Nation must condemn. It is what your Lordships have already condemned by the Resolutions you came to last Session of Parliament; and when from his Majesty's Speech it appears, that something has been done, which you must, which you ought to condemn, as soon as you come to enquire into it, can you make use of any Expressions in your Address, which may look like an Approbation of what has been done? Can you mention such a Measure without testifying your Dislike?

Anno 12. Geo. II.

1738-9.

I shall always, my Lords, be for shewing as much Respect and Esteem for his Majesty as we can express; I shall even be for shewing, upon all Occasions, as much Complaisance as is consistent with the Dignity of this House. When I do so, I speak from the Sincerity of my Heart; but that very Sincerity will always prevent my shewing such a Complaisance as may mislead. When we approve, or but seem to approve, of Measures which ought to be censured, which almost every Man without doors does censure, it is shewing no Complaisance to our Sovereign: 'Tis behaving with Insincerity, I may say with Infidelity, towards him, for the Sake of shewing a mean Complaisance to his Minister. This is a Behaviour, which no Precedent, no Custom, can warrant: It is a Behaviour, which every Man must in his Conscience condemn. But what is this Custom, which is now pleaded for such a fawning, such a false sort of Behaviour? Why, my Lords, it is not of much above twenty Years standing: It is not much above that Time since we first began to echo back Paragraph by Paragraph, in our Address, the King's Speech from the Throne. It was a bad Precedent at first, and therefore ought never to have been followed. But even this Custom, bad as it is, neither ought, nor can be made a Precedent upon the present Occasion. Upon no former Occasion can it be said, that even from the King's Speech, something appeared to have been done, which ought not to have been done, and which this House could not but perceive, from what his Majesty told them of it in his Speech, that they would be obliged to censure. This, my Lords, is the Case at present: His Majesty in his Speech has told us, that the searching of our Ships upon the high Seas is referred to be regulated by the Commissaries. Can your Lordships approve of this? Can you mention it without a Censure? Therefore the greatest Regard, the greatest Complaisance you can, upon the present Occasion, shew to his Majesty, nay the greatest Complaisance you can

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Anno 12. Geo. III. in Honour shew to his Minister, is not to mention it at all.  
 1738-9. For which Reason, I hope your Lordships will, at least upon this Occasion, resume the antient Method of addressing, and for that Purpose agree to the Amendment proposed.



*The Earl of Cholmondeley.*

My Lords,

Earl of Cholmondeley.

I was indeed very much prejudiced in favour of the Address moved for by the noble Duke who spoke first, upon hearing it read by his Grace; but am now perfectly satisfied of its being a proper Address for us to make on this Occasion, having heard unanswerable Arguments urged in Support of it, and all the Arguments on the other Side having, in my weak Judgment, been levelled rather against the Convention than against the Address. What this Convention is, a very little Time will shew; but since we can't as a House yet know what it is, I think it very extraordinary that the noble Lord who spoke last should enter upon Arguments that entirely relate to it, and are therefore quite foreign to the Subject of this Debate.

The noble Lord hath enter'd on a Debate, wherein the Lords who are on the other Side of the Question, cannot be supposed prepared to answer his Lordship; however, as I think that so much of his Speech, as can be supposed to have any Relation to the present Question, may very easily admit of an Answer, I shall crave the Indulgence your Lordships have always shewn me on such Occasions. The noble Lord was pleased to say, that the first Paragraph of the Address moved for was sufficient for all the Purposes of an Address to his Majesty on this Occasion, and that all the rest was Incense to his Ministers. My Lords, that noble Lord, as he knows the Forms of this House extremely well, none better, must know that when a Speech is delivered from the Throne, it is always thought decent and dutiful to say something in our Address of Thanks to every Paragraph, and every material Sentence in the Speech. This, my Lords, is thought a proper Way of Proceeding even in Matters of common Life; it has always been thought right in one Person to take some Notice of what has been communicated by another, tho' perhaps his Inferior, either in Words or Writing, and to let no Part of his Speech or Letter pass without some Answer. If this, my Lords, is requisite in private Matters, it is much more so in Affairs of State, wherein the good Correspondence that subsists betwixt his Majesty and his Parliament is the principal Cause of our Government's making that Figure both at Home and Abroad which I shall always desire

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it should, and which, I hope, it always will. The noble Lord who spoke last has, my Lords, given us a great many Reasons why no Alteration of this Method ought to be made at present. His Lordship has described, in very feeling Terms, the bad Situation of our Affairs both at Home and Abroad : And tho' I can by no Means agree with the noble Lord in all his Sentiments, yet I think that the more desperate our Affairs are, our Proceedings ought to be expressive of the greater Duty to his Majesty, and the greater Unanimity amongst ourselves. This, my Lords, is the right, this the ready Way to extricate ourselves out of all our Difficulties; whether they proceed from the Mismanagement of those in, or the Practices of those out of Power. This House, my Lords, ought to be of no Party; if the public Councils are embarrass'd, if the Affairs of this Nation are in Disorder, we ought to unite our Endeavours to retrieve them; we ought to make that our first Care; and then we shall have Leisure enough to enquire by whose Mismanagement, by whose Treachery, those Inconveniencies have happened.

I shall readily admit, with the noble Lord, that *Spain* has never yet failed to improve every Advantage she has obtained, to our Prejudice; but I am far from thinking that these Advantages have been owing to the Management of our present Ministry. But, be that as it will; it, upon this Occasion we give the *Spaniards* the least Ground to suspect that there is not a perfect good Understanding betwixt his Majesty and his Parliament, and amongst all the Members of the Parliament, we give them the fairest Opportunity they ever had of improving that Misunderstanding to our Prejudice. Then, my Lords, and it cannot be till then, we may fall into that Contempt, that Disregard, among our Neighbours, which the noble Lord has described. And here, my Lords, I must take Notice, that the most obvious and natural Way, by which any of our Neighbours can judge of the Dispositions of this Nation and Government, is by what passes betwixt his Majesty and his Parliament; and nothing can give them greater Encouragement than their observing that we have put such a Mark of Disrespect upon his Majesty, as to take no Notice of the principal Transaction that his Ministers have negociated since last Session, and which his Majesty has declared he will order to be laid before you. With the *Spaniards*, my Lords, it must have this bad Effect, that they will immediately conclude, the Parliament of *Great Britain* is resolved to condemn this Negociation at all Events. Therefore they will think themselves under no Obligation to perform any of the Stipulations on their Part, since the whole must be ineffectual by its not meeting with

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the Approbation of Parliament. This Notion, my Lords, will give them greater Encouragement than any Incident that can happen; for if the Convention is ineffectual, there is no Reason that they should discontinue their Depredations, there is no Obligation for them to fulfil their Engagements. At the same Time they have nothing to apprehend from a State divided within itself, where the Parliament in a Manner declares that they are resolved not to be satisfied with a Measure which has been judged necessary by the Sovereign and his Administration, and declares this even before they know what the Measure is. My Lords, give me leave to say, that our agreeing to the Amendment must necessarily have this Effect; and, in that Case, my Lords, I should not be at all surprized if this Alteration in the Conduct of *Spain* should be imputed to the Ministry; I should not be surprized if, upon their Continuance of their Depredations, upon their seizing the Ships and Effects of all our Merchants in their Ports or on their Seas, we should hear all attributed to the Mismanagement of the Ministry, when, in reality, it would be owing to nothing but to our own Prejudices, which would not suffer us to look into a Measure that might have prevented all these Consequences, and might have probably put the Trade and Interest of this Nation on a sure and an honourable Foundation.

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My Lords, if I should follow the noble Lord, who spoke last through every Argument he advanced, I should take a Method which I have already blamed. I cannot however help observing, that if, as the noble Lord seemed to insinuate we ought to do, we make those without doors not only Partners but Judges of our Councils, we are then in a deplorable Situation indeed; we may then bid adieu to the Dignity, to the Influence of both Houses of Parliament. Not that I am for disregarding the Sense of the People; far from it, I have as great a Deference for their Judgment as is consistent with their own Interest, or as I, or any Lord, ought to have. But, my Lords, it should be always understood that the Cases, wherein their Judgment is to be consulted, be such as fall immediately under their Eye. When private Property is invaded by Power, when their own Rights and Privileges are attacked and violated, and when any notorious Breach is made in the Constitution, the People from being Parties have then a Right to become Judges, in case they are denied all Redress from their Superiors and Representatives. But will any Lord affirm, that the Sense of the People, or rather a Faction amongst the People, ought to influence, far less determine, us in our Deliberations about Affairs of which the People can have no right Information, and

and which they can only see with the Eyes of those whose Intè-  
rest it is to mislead them. Anno 12. Geo. II.

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My Lords, the Right to make Peace and War is indisputably in the Crown : Even the Parliament itself, tho' it has indeed a Right to advise, has none to direct in such Cases ; and if ever there was a Case in which the People could not receive right Information, if ever there was a Juncture in which they were incapable to receive it, it is the present, wherein the Success of our Councils in a great measure depend on the Secresy with which they are formed, and wherein the Minds of the People are debauched by the vilest Insinuations that Faction could suggest. No Pains have been spared, no Arts have been wanting to make them believe that they have been weakly and wickedly governed. Defamatory Libels have been industriously, and I am afraid too successfully, propagated thro' all Parts of the Kingdom. Majesty itself has been attacked through the Sides of the Ministry ; in short, no Order however sacred, no Degree however high, has been exempted from Insult. Can a People, my Lords, whose Hearts are thus debauched, whose Judgments are thus perverted, decide with that Impartiality, with that Candour, which is requisite in judging of public Affairs ? My Lords, if the Ministry has been deficient in any Point of their Duty, it is in the Indulgence they have shewn to that Spirit of Licentiousness and Defamation that has gone abroad. But this Indulgence proceeds from a Tenderness for Liberty ; and this Government has ever been cautious of suppressing Licentiousness, either in speaking or writing, lest Liberty itself should suffer.

The noble Lord was pleased to appeal to the young Lords lately come from their Travels, when he mentioned the Contempt which this Court and Nation are fallen into abroad. My Lords, if this Fact is so notorious, as the noble Lord seemed to suppose, very probably it would be no Secret to every Lord in this House ; but I own it is so to me. For tho' I have had the Honour of conversing with the Lords who have seen the other Courts of *Europe*, and with Men who have had great Opportunities of knowing the Situation of Affairs abroad, yet I never heard them insinuate that we were so despicable in the Eyes of foreign Courts as the noble Lord has represented us to be. If, my Lords, we are to judge of the Figure we make abroad from the Effects which our Councils have lately had, I will be bold to say, that there is no Period of Time wherein the Character of the Nation in general has been better sustained. But, my Lords, I shall for once admit that our Court and Nation do not act with that decisive Weight which formerly attended our Councils

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Anno 12. Geo. II. and Arms ; yet I am far from admitting that this is a good  
 1738-9.

Argument why we ought to agree to the proposed Amendment. If our Credit and Reputation run so low abroad, we have much stronger Presumptions to believe that this is owing rather to the Arts of a discontented Faction among ourselves, than to our Government acting below its Dignity. I shall suppose that a Foreigner, my Lords, reads the Performances of one of our weekly Retailers of Scandal and Defamation : He there sees the Government represented in the most ridiculous Colours ; he sees our most public-spirited Measures burlesqued ; he sees every Man who has the Honour to be about his Majesty's Person, openly railed at and calumniated. What Conclusions may not such a Foreigner form ? If he is ignorant, as many Foreigners are, of the vast Liberty which every Subject in *Great Britain* enjoys in publishing his Thoughts upon public Transactions, is it not natural for him to conclude, that our Government is so weak that it dares not resent such gross Abuses ? If he looks upon us as a People governed by Laws, which circumscribe not only the Power of the Sovereign, but likewise bound the Liberty of the Subject, will he not naturally be surprized that the Government should not take the Advantage of these Laws, and punish those who so notoriously violate them ? Thus, my Lords, the Reasons why we are fallen into Contempt abroad, if such a Fact were true, may be very easily accounted for, without throwing any Slur upon our Government or Ministry.

If, my Lords, the Fact is otherwise, as I humbly presume it is ; if we still act with Dignity, if we still act with Weight at foreign Courts, the Ministry have done more, by bearing up against so many Disadvantages, than any Set of Men who, so far as my Reading or Experience reach, ever acted in public Characters : And this, my Lords, will be sufficient in every impartial, in every unprejudiced Eye, to acquit them of any Imputation of their sacrificing the Honour of this Nation, either from public Cowardice or private Interest. I have, my Lords, been the longer on this Point, because I know the Opinion of our being pusillanimous and contemptible at foreign Courts has been very industriously propagated, with the worst of Views ; and tho' I dare say the noble Lord who spoke last touch'd upon it with the best Intention in the World, yet 'tis very probable that he may be misinformed himself, and I am glad of this Opportunity to let his Lordship know, that the Opinion of our being held in such Contempt abroad, is not near so general as some would insinuate.

The noble Lord, who spoke first for the Amendment, threw out several Things that seemed to serve as the Foundation

tion of what was advanced by the noble Lord who spoke last. His Lordship said, that the Match betwixt the *Spaniards* and us was by no means equal in the Cabinet. My Lords, I believe it will be very hard for the noble Lord, from what appears upon the Face of his Majesty's Speech, to prove that a People who disown their unjust Proceedings, who have engaged to pay Damages, who have agreed to remove all Occasion of the like Complaints for the future, have outwitted those with whom they treated; it will be a very difficult Matter, my Lords, to prove that these Stipulations are any Marks of Victory and Triumph. The noble Lord who spoke last, however, reasoning from such unlikely Supposition, said, that this Convention, shameful as it is (tho', by the Bye, his Lordship was not pleased to give any one positive Reason why he thought it shameful) was but the Prelude to more scandalous Terms. My Lords, there is no doubt that one Nation, who has Differences with another, will do all she can to have these Differences accommodated in the manner that is most advantageous to herself; and if she finds herself superior in Force to the contending Nation, she will impose Terms upon her not strictly agreeable to Justice: Nay, in such a Case, if, after the Conclusion of even an equitable Treaty, she shall find that it is her Interest to break thro' her Stipulations, it is very possible she will have very little Regard to the Ties of Equity and Honour. But can any Lord say, that either of these is, or absolutely will be, the Case betwixt *Great Britain* and *Spain*? No Lord, who does not know what the Convention is, can say that it is advantageous to *Spain*; therefore he cannot regularly object to it, till it is communicated to the House. No Lord, I am sure, will contend that *Spain* is so far superior to us in Force, as to be in a Condition to impose upon us her own Terms; and if any Circumstance, any Accident, shall hereafter happen that shall put it in her Power to violate her Faith with Impunity, give me leave to say, my Lords, that it is not quite a fair Way of reasoning to impute that to the *English* Ministry: For the same Argument may serve equally against all Treating whatsoever, since it is impossible to foresee Contingencies. I would willingly put it to any of your Lordships, whether, if the *French* should avowedly, and without so much as a Colour of Justice, break any or all the Stipulations contained in Treaties betwixt us and them, it would be just in this House to blame and to reproach the Ministry who made these Treaties? Ministers, my Lords, are only accountable for the Prudence and Expediency of their own Measures, and not for Circumstances arising posterior to these Measures, nor the faithless Conduct of other People. Upon the

Anno 12. Geo. II.

1738-9.



Anno 12. Geo. II.  
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the Whole, therefore, I do not see upon what Grounds the noble Lord can foretel that this Convention is a Prelude to more scandalous Concessions, unless his Lordship supposes that the *Spaniards* have entered into Engagements, which, tho' they publicly ratify, they secretly purpose to break. But, my Lords, if this Convention shall appear to be a good one, as we have all the Reason in the World to believe it is, give me leave to say, that our Ministers are not answerable for any secret Resolution which the *Spaniards* may have made to break it, or any unforeseen Contingency that may hereafter encourage them to evade it.

What I have said on this Head will, my Lords, I hope, obviate what fell from the noble Lord who spoke last, when he represented the *English* as in the last Agonies of their Liberty. I own, my Lords, that Expression presented to my Imagination the most disagreeable Idea that can possibly occur to any Man who feels the least Affection for his Country. But my Comfort is, that the Liberties of *England* are safe, while we ourselves have Courage and Honesty enough to unite in their Defence. The Liberties of *England*, my Lords, can only be lost by the Treachery of a Faction within ourselves, who are resolved rather to give them up, than to forego the darling Schemes hatched by their Ambition and nursed by Revenge. And, my Lords, as the noble Lord said very justly, that no Lord who wished well to his Country could be an unconcerned Spectator while it is endangered by a foreign Power, I dare say, no such Lord will look tamely on while its Liberties are sacrificed to a domestic Faction. The only Means of securing them against both the one and the other, is, by following his Majesty's Advice, which you have just now heard from the Throne, in avoiding all Party-Heats and Animositities. This is the Way to prevent all the fatal Consequences that have been suggested by the noble Lord, and to deprive the Enemies of this Nation of the only Means they can employ to our Hurt. But, my Lords, what an unhappy Omen would it be of our Divisions, if, upon the very first Day of our Session, we should, without paying the least Deference to the Royal Advice, and before we look'd into the Measures which the Wisdom of his Majesty and his Ministry has thought proper to pursue for the Interest of this Kingdom, I say, if we should refuse even to thank his Majesty for his Endeavours to procure Justice and Reparation to the Nation!

My Lords, the noble Duke who spoke on the same Side I now rise up for, so fully pointed out the Expediency and Fiteness of this Address at this Juncture, that I have very little to add to what was said by his Grace. I shall only beg leave,

AS

as a further Inducement to your Lordships for agreeing to the Address without the Amendment, to observe, that the most ready Means of disappointing the *Spaniards*, in case they vainly entertain any Hopes of being able to impose dishonourable Terms upon this Nation, is by our acting unanimously, since their Hopes can be founded only on our Divisions. My Lords, I don't only mean unanimously in a Parliamentary Sense, but unanimously in a National one; that is, we ought, as Subjects as well as Members, to act in Concert with his Majesty and his Ministry; for if our common Enemies shall find that there is a Misunderstanding betwixt the Legislature, or any Part of the Legislature and the Crown, they can make greater Advantages of such a Division than of any other. Nay, my Lords, give me Leave to say, that the Dispositions with which we enter upon this Affair, when it shall be laid before us, ought to be such as may incline us to support his Majesty's Measures, even tho' they should not appear, to some of us, to answer all the Ends which the most vigorous and sanguine may have proposed to themselves.

I know, my Lords, it is given out by some, that we ought not only to have it stipulated that the Losses of our Merchants shall be repaired, but that the *Spanish* Monarch shall pay for the Expences we have been at in our Armaments upon this Occasion. My Lords, such an Insinuation can be made only by those who are so much the Enemies of Peace, that they will make use of the vilest, the most unreasonable Suggestions to obstruct it. One Nation's paying for the Expences another has been at in her Armaments to obtain Justice, is a Thing that is very seldom either insisted on or obtained. There are indeed some very few Instances wherein an enraged Conqueror, whose Enemy is at his Mercy, has obliged that Enemy to refund some small Part of the Expences he has been at; but I can defy any Man to shew me an Instance wherein one Nation has obtained not only all the Ends of her arming, without striking a Blow, but has procured likewise a Reimbursement of the Expences she has been at. In such an Event, my Lords, it is always understood, that the giving up the Points in Dispute is Satisfaction enough. In the present Case we put the Crown of *Spain* to at least as much Charges as we were at, I am credibly informed to double. As soon as an Account arrived there that our Squadron was fitted out, she gave Orders for fortifying all her Coast-Towns, for fitting out all the Ships in her Ports, and encreasing considerably her Forces both by Sea and Land. This, my Lords, ought to be Satisfaction enough to us for the Expence of our Armament; and had we insisted on having any other Satisfaction, we must have given her and all

*Europe*

Anno 12. Geo. II,  
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Anno 12. Geo. II.  
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*Europe* to understand that we were resolv'd to be satisfied with nothing less than a War. There are several noble Lords, here, I believe, who may remember the Conclusion of the Treaty of *Utrecht*. I would gladly appeal to their Lordships, whether we then insisted upon *France's* paying to us upwards of fifty Millions for the Expences we had been at in the War then ended. And yet, my Lords, that War was just and necessary. It was undertaken to preserve all that was valuable and dear to us, both as Men and *Englishmen*, and it was conducted with as much Glory to this Nation as any War ever was to any Nation. I should be glad to know of the same noble Lords, whether the *Dutch* insisted on any such Reparation, tho' their Motives of entering into that War were as just as ours; and they were perhaps less able to be at the Expences of that War than *England* was. So that, my Lords, I say, the Suggestion of our being refunded all our late Expences by *Spain*, is only in order to make a War with that Crown inevitable, and is calculated only to serve the private Views of an interested Party among ourselves.

I shall now take the Liberty to observe to your Lordships, that a noble Lord, seem'd to lay a particular Emphasis upon the Resentment which his Lordship suppos'd that the Minister of *France* would shew, if any Power in *Europe* should talk of a Right to search *French* Ships on the open Seas. His Lordship's Expression was remarkable; he said, that Minister would not permit any Ambassador, who durst talk at that Rate, to enter his tenth Antichamber of State. My Lords, I have a very great Opinion of the *French* Minister's Wisdom; I am likewise sensible of the vast Power and Interest of his Sovereign: But give me leave to inform your Lordships, that this powerful Monarch, that this wise Minister have suffer'd *French* Vessels to be seized and confiscated by the Crown and Subjects of *Spain*, and yet have never thought fit to reclaim them. Nay, my Lords, to my certain Knowledge, *French* Vessels have been taken by the *Spaniards* with more aggravating Circumstances, and with less Colour of Justice, than what have happen'd to any *English* Vessel. That Minister, my Lords, rightly consider'd, that to have gone to War upon Representations from one Side only, would have been both impolitic and unjust. He consider'd, that it is the Intention of all the Treaties which regulate the *American* Trade, that the *Spanish* Property in the *West-Indies* ought to be sacred, inviolate by any other Power. And that to have reclaimed one Ship, though perhaps unjustly condemn'd, might have brought on an Enquiry into the Abuses committed by other  
*French*

*French Traders in America*, and so in the End have occasioned a Breach betwixt the two Crowns. And here, my Lords, I cannot but observe the Excellency of our Constitution, and the Tenderness of our Government for the Rights of the Subject. In other Countries, my Lords, the Property of the Subject is often sacrificed to the Politics of the Government; but in this Kingdom the Government is obliged to be the Guardian of that Property, and no Subject, however mean his Property is, can have it taken from him by any Ministry, or by any Power. This Excellency in our Constitution has, my Lords, been of singular Use to our Merchants upon this Occasion, and they have enjoyed the Benefit of it to its full Extent. I hope, my Lords, no bad Use has been made of this Indulgence; I hope our Merchants have not been made the Tools of a Faction amongst ourselves, nor have aggravated their Losses in order to raise a Clamour against the Government, which has been so very favourable, so very indulgent to all their Claims. I hope farther, my Lords, and I presume my Hopes are well founded, that every Lord here, who speaks in this Debate, is as well acquainted with the Nature of the Grievances complained of by *Spain*, as he is of those which our Merchants complain of. If we are not, my Lords, if we hear all only on one side of the Question, if we are so partial to ourselves as to be willing to hear nothing on the other, I don't see how we can ever form a right Judgment, even after the Convention is regularly communicated to this House. At present, my Lords, we are under very great Uncertainty; for we are not only ignorant with regard to the Terms of the Convention, but we are ignorant of the previous Steps that were taken to bring it about, and of the Difficulties that the Ministry had to surmount before it could be concluded. I am ignorant of them my self, my Lords; but perhaps when the House shall be informed of them, as they will probably be in the Course of the Debate that may arise when the Convention is laid before us, Lords may change their Sentiments about this Measure, however they are now prejudiced against it. For these Reasons, my Lords, I think it is extremely improper for us to agree to any Amendment of the Address proposed by the noble Duke who spoke first, and that, if we should agree to the Amendment proposed by the noble Lord, we must do it for Reasons which, however they may affect some Lords, can never be evident, can never be satisfactory to us as a Part of the Legislature.

Anno 12. Geo. III.  
1738-9.

Anno 72 Geo. II.

1738.9.

Lord Carteret.

Lord Carteret.

My Lords,

I hope, from the whole Tenour of my Conduct, both without Doors and within, it has appeared, that no Man has a greater Affection for his Sovereign, or is more sensible of his Duty towards him, than I am ; but this is to be testified, and I shall always endeavour to shew it, by telling him the Truth. By what is said in an Address, upon any such Occasion as the present, we are not, it is true, precluded from giving our Sentiments freely, or even from censuring afterwards, what we may seem to have approved of in our Address; but this is not enough: In all such Addresses, we ought either to make general Professions only of our Affection and Duty, or, if we descend to Particulars, we ought to have a twofold View. By descending into Particulars upon such Occasions, we ought to have a View of shewing to his Majesty the Sense of his People, and to the People the Sense of this House. Therefore, we ought never to say any thing that may tend to make his Majesty believe, that his People are satisfied, when every Lord in this House knows the contrary to be true; nor ought we to say any thing, that may make the People mistake the Sentiments of this House.

The whole Nation, my Lords, have now their Eyes fixed upon the Parliament; they have been greatly injured, they have loudly complained; and it is from the Parliament only they expect Relief. Shall we, my Lords, by our Address upon this Occasion, make his Majesty believe, that his People are satisfied with what has been done? Shall we make the People believe, that we are satisfied? The very Thought would throw such a Damp upon their Spirits, as would make them despair of any legal Relief; and what might be the fatal Consequences of such a Despair, God only can tell; for fatal they must be, let it take what Turn it will. If they sit down tamely, and only groan under the Weight of Sorrow they feel, we have broke, we have undone the Spirit of our People; we have made them fit for Slavery and arbitrary Power. But this, I hope, will not be the Consequence; the People of *England* will suffer, they have suffered a great deal; but they will not suffer too much. If Care be not taken in time, if some seasonable Relief be not speedily administer'd, our Dominions will be dismembered. They will be dismembered; but they can be dismembered by the Sword only; for if those who govern us, do not make use of the Sword for their Defence, the People will turn it against them: So that by avoiding, wisely, as some amongst us may think, a foreign War, we may

may involve ourselves in the worst of all Wars, a civil one; Anno; 2. Geo. II. and by being too much afraid of Invasions, we may expose ourselves to what is much worse, a general Insurrection. 1738-9.

We have of late Years, my Lords, suffered many Indignities; we have long suffered. Our People from a Conscioufness of their own Strength, as well as from the Resolutions of both Houses, last Session of Parliament, expected that before this Time, full Reparation, and absolute Security would have been procured by peaceable Means, or that a proper Use would have been made of the Aids so cheerfully granted last Session, for procuring it by Force of Arms. And now what have we got? A Treaty, a Convention, by which, we may see, from what his Majesty has told us of it, that we have got no Security, and, I am afraid, little or no Reparation. As for the Reparation we have obtained, if any, I shall say nothing of it, till I can see, from the Treaty itself, what it is; but as for our future Security, every Man may see, from what his Majesty has told us, that it will be rendered more precarious, than ever it was heretofore.

While our Ships, my Lords, continue to be searched, while any Nation in the World dares pretend to search a *British* Ship upon the open Seas, we can have no Security, we can have no free Trade, nor any safe Navigation. No Search, my Lords, is the Word with every Man in the Kingdom. It ought to have begun among those about the Throne; but where-ever it began, it is now echoed and re-echoed from every Corner of the *British* Dominions; and shall we seem to insinuate to his Majesty, that he may be satisfied; shall we seem to intimate to the People, that they ought to be satisfied, with referring such a Point as this to be regulated by Plenipotentiaries, or Ministers of any Denomination? My Lords, it ought to have been insisted on as a Preliminary even to treating. We ought not to have so much as to begun to treat, till this of no Search had been granted to us. In all Negotiations there are some Points, that ought to be settled before any equal Treaty can be set on foot. The *Dutch*, even in the Infancy of their State, would not so much as begin to treat of a short Truce with *Spain*, till the *Spaniards* agreed to treat with them as a free Nation; and at the Treaty of *Munster*, after a War of near seventy Years Continuance, with very little Interruption, they would not so much as begin to treat, till *Spain* agreed to declare them a free Commonwealth. Can we pretend to be a free Nation, as long as *Spain* claims a Right to search our Ships upon the high Seas? Will any of our Ministers dare to negotiate with them

1738-9. E e e 2 about

Anno 12. Geo. II. about such a Right? Will any Minister or Plenipotentiary presume to grant it, under any Regulation whatsoever?

1738-9.

Such a Right, my Lords, had never been claimed, if we had, at the beginning, understood what we were about. It is a Difficulty we have puzzled ourselves into, by not understanding the Difference between searching and visiting, nor between contraband and prohibited Goods. If we had understood this, and had at first properly explained what we were entitled to by the Laws of Nations, and the Treaties subsisting between the two Crowns, *Spain* would never have pretended to search our Ships, upon the open Seas, in any Part of the World. Contraband Goods, properly speaking, are only those Goods which are used, or useful in War; and, as every Nation that is at War with any of her Neighbours, pretends to a Right, not to allow such Goods to be carried to an Enemy's Port, therefore every Nation pretends to a Right to visit such Ships as she meets with at Sea, in order to see whether they are bound to an Enemy's Port, and have any such Goods on board. Prohibited Goods, again, are those which, by the Laws of any particular Country, are forbid to be imported or exported; and, every Nation pretends to a Right to search those Ships that come into her Ports, in order to see that they have no Goods on board which are forbid to be imported, and likewise to search those Ships that are going out, in order to see that they have no Goods on board, which are forbid to be exported.

This, my Lords, is the Difference between contraband and prohibited Goods, when the two Terms are properly and distinctly used: And, the Difference between searching and visiting is this; searching is always in Port, and never on the high Seas; visiting is always on the high Seas, and never in Port. When a Ship in Port is searched, the Search must be made by the proper Officer, and in a legal manner: When a Ship on the high Seas is visited, she ought to be visited according to the Method usually prescribed by Treaty, which is thus: When a Man of War of one Country meets in the high Seas a Merchant-Ship of another Country, the Man of War is not to approach the Merchant-Ship nearer than Cannon Shot, but may send out his Boat with an Officer and two or three Men only, to whom the Master of the Merchant-Ship is to shew his Bills of Lading, and to these Bills of Lading the Man of War is to give entire Credit. Even when it appears by the Bills of Lading, that she is bound to an Enemy's Port, and has contraband Goods on board, such Goods only are to be seized and confiscated. From hence it must appear, that no Nation in the World can have a Pretence for searching the Ships of another upon the

the high Seas ; and much less for condemning and confiscating the Ship and whole Cargo, on account of her having contraband or prohibited Goods on board ; and therefore it was ridiculous ever to allow the Word contraband, or the Word prohibited, to enter into the Dispute between *Spain* and us.

Ann<sup>o</sup> 12. Geo II.  
1738-9.

*Spain*, my Lords, may forbid the Importation of any Sort of Goods she pleases into her own Dominions, or she may forbid the Exportation of any Goods she pleases out of her own Dominions ; and such Goods may be called, and may be seized as prohibited Goods, when found aboard any Ship in her own Ports. But *Spain* can forbid the Importation or Exportation of no Sort of Goods into or out of any Part of the *British* Dominions ; nor can she forbid the Transportation of any Sort of Goods from one Part of the *British* Dominions to another. On board a *British* Ship bound from one Part of the *British* Dominions to another, there can be no Goods that *Spain* can call either prohibited or contraband. We can never admit of any such thing : If we do, we can carry on no Trade in *America*. No *British* Ship can trade there, but what must have on board some such Goods as the *Spaniards* call contraband or prohibited. *Spanish* Pistoles and Pieces of Eight are the current Coin of all our Plantations ; a Coin which is often brought there, even by the *Spaniards* themselves : Cocoa is the Production of *Jamaica* as well as *New Spain* ; and Logwood grows both in *Jamaica* and *Providence* ; so that tho' we should give up our Right to the Bay of *Campachy*, which, I hope, notwithstanding our present submissive Temper, we shall not do ; yet we cannot allow the *Spaniards* to seize our Ships, on account of their having such Wood on board.

But suppose, my Lords, we were to allow of what they call prohibited Goods. Suppose we were to allow, that none of our Ships sailing in the *American* Seas ought to have such Goods on board ; yet, surely, we are not to allow them, upon this Account, to search our Ships on the high Seas, and to confiscate Ship and Cargo, and imprison and maltreat the Seamen, when they find such Goods on board. The most they could, even in this Case pretend to, would be to visit our Ships in the Manner settled between us by Treaties, and to seize only those contraband Goods they find on board, without detaining the Ship, or touching any other Part of the Cargo. Therefore, even in this Case, which is the hardest that can be put, no Search on the high Seas ought to be the Word : No Search but in Port is the Point which ought to have been insisted on, as a Preliminary to our treating with them at any Rate. For this Reason,

I am



Anno 12. Geo. II. I am surprized how any Minister could think of referring  
 1738-9. this Point to be regulated by Plenipotentiaries. The very  
 Reference is an Injury to this Nation, almost irreparable :  
 It is a tacit Acknowledgment of the Right the *Spaniards*  
 lay claim to, when put under proper Regulations ; but, I  
 hope, no *British* Plenipotentiary will ever dare to settle, or  
 consent to such Regulations : If any one does, I am sure,  
 both he and the Minister that gave him the Power, will de-  
 serve the Curses of their Country, and the highest Indigna-  
 tion of this House.

No Search on the high Seas is therefore, my Lords, what  
 we must insist on. It is what all *Europe* will insist on. If  
 we should be bullied into the giving up of such a Point, or  
 submitting to have our Ships searched on the high Seas, un-  
 der any Regulations, I am sure *France* never will. The  
 Cardinal, as old as he is, would disdain to hear of treating  
 upon such a Subject. He would not admit, even into his An-  
 ti-chamber, a Minister that had come from *Spain* with such  
 a haughty, such a ridiculous Proposition, *Monsieur de la*  
*Quadra* could never have thought of it, if he had not been  
 led into it by the Ignorance, or the Pusillanimity he found in  
 those he treated with. I remember him a Gentleman of  
 very little Consideration ; but now he takes upon him to  
 say, that the *English* ought to learn to understand their own  
 Rights and Privileges. Perhaps he had Reason to say so  
 of those he treated with. He could, at that Time, mean  
 none else ; but if the Parliament should approve of this  
 Convention, or if we should agree to the Address now  
 proposed, he may justly say so of the whole Nation.

I shall readily agree, my Lords, that the present Con-  
 juncture is none of the most favourable for this Na-  
 tion. The State of Affairs in *Europe* is, indeed, formida-  
 ble. It is growing every Year more and more so. Last  
 Year it was more formidable than the preceding, and this  
 Year it is more formidable than it was the last. What will  
 at last become of us, I shall not pretend to determine ; but,  
 I may pretend to prophesy, that our Affairs both at home  
 and abroad, will next Year be more formidable than they  
 are at the present ; unless some wise and vigorous Measures  
 be taken for dispelling the Cloud that hangs over us ; and,  
 I have very little Hopes, that those who have been the  
 chief Cause of its gathering, will have either Wisdom  
 to dispel it, or Fortitude to withstand its breaking upon  
 us.

People may wrangle and talk long enough about our  
 past Measures. All public Measures are of such a Nature,  
 that a great many things may be said against the best, and  
 a great

a great many plausible Arguments may be made use of in Anno 12. Geo. II. Favour of the worst. But, my Lords, the Wisdom of public Measures is best known by their Effects. The Effects of some of our past Measures begin now to appear, and those Effects have such a dismal Aspect, that I must thank God I had no Hand in their Causes : I must thank God that my Testimony against some of them appears upon Record, and will be a Vindication of my Conduct to distant Generations, to those yet unborn, who, I am afraid, will feel the Effects of some of our late Measures more sensibly than we do. A rich and powerful Nation cannot at once be destroyed by any internal Cause : Its Strength cannot at once be annihilated, and its Riches dissipated, by the worst Measures it can pursue : But its Strength and its Riches may be wasted by Degrees ; and its Destruction will be the more cruel and tormenting, by being brought on by Piece-meal. This I am afraid, is our Case, and it is some Alleviation of my Grief, that I cannot be charged with having had a Hand in it ; but if I could, if I had approved of all our past Measures, I should now from their Effects begin to suspect I had been mistaken ; and should be extremely shy of approving the future Measures of those, whose past Measures appeared by their Effects to be wrong.

1738-9.

'Tis true, my Lords, our past Measures have, for many Years, met with a continued and uninterrupted Approbation from a Majority in each House of Parliament ; but the Approbation of Parliament cannot make that right, which is in itself wrong ; and the unfortunate State we are now confessed to be in, is an irrefragable Proof, that all our past Measures have not been right. The Approbation of Parliament is therefore so far from adding to the Opinion People have of our past Measures, that it derogates from the Opinion our People ought to have of the Penetration and Integrity of Parliament ; and this must aggravate, instead of diminish, our present Misfortunes ; for if our People think they can put no Trust, neither in the Councils of those that govern them, nor in the Wisdom and Integrity of Parliament, they can make but a faint Resistance against any foreign Power that shall please to attack them.

The present State of Affairs in *Europe*, my Lords, does not proceed from the Nature of Things, but from the late Measures pursued by *France* and us. *Spain* had Dominions in *Italy* of old, larger than she has at present ; and the Emperor would then have been glad to have had a Share of them : Yet there was a constant Friendship and Alliance kept up between them for many Years against *France*. It is the Business of *France* to sow Dissension between these

two

Anno 12. Geo. II. two Powers: It is our Business to heal their Breaches:  
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In this the *French* have either outwitted, or frightened us. It was they that terrified us from accepting of the sole Mediation between *Spain* and the Emperor, at the Treaty of *Cambray*: Our accepting of that Mediation could not have involved us in any War: If it had, the War would, in all human Probability, have ended greatly to the Honour and Advantage of this Nation. It was the *French*, I am apt to believe, that forged those dreadful secret Articles, said to have been agreed on between *Spain* and the Emperor, by the Treaty of *Vienna*. By that Forgery they terrified us into that most extraordinary Treaty at *Hanover*, and the still more extraordinary Measures we took in Consequence of that Treaty.

The *Osford East-India Company*, my Lords, was a Company we had no direct Right to destroy. The *Dutch* had perhaps a Right to oppose the setting up of that Company; and if we had then a mind to pick a Quarrel with the Emperor, we might have said we were Guarantees of that Right; but all Nations find Pretences for not fulfilling the most express Guarantees, when their own immediate Interest does not enforce a Performance. We have since found Pretences for not fulfilling a Guarantee, much more express than the *Dutch* could in that Case pretend to; and even when our own Interest seemed to enforce a Performance. Besides, the *East-India Company* set up at *Osford*, would have interfered a great deal more, both with the *French* and the *Dutch East-India Companies*, than with that of *England*; therefore it was their Business more than ours to have it destroyed; and yet the *Dutch* were so far from being Principals in the Treaty of *Hanover*, that they did not come into that Treaty till long after, and that under great Restrictions. If the *Osford Company* had been the only Reason for finding Fault with the Treaty of *Vienna*, it was the *Dutch* and the *French*, not we, that should have raised Armies, and sent out Squadrons for compelling the Emperor to give up that Company, or for preventing the *Spaniards* from given it any Relief; but so far otherwise, that we took the whole Expence, and the whole Resentment upon ourselves; and by that Means put a new Stop to our Trade with *Spain*, and greatly interrupted our Trade both in *America* and the *Mediterranean*, while both the *Dutch* and the *French* carried on their Trade in all Parts of the World without Interruption and with great Security.

By this Management, my Lords, we at last found we had run ourselves into a Trap, and to get out of that Trap, we run ourselves into another, by the Treaty of *Seville*. Then

to get out of this second Trap, we run ourselves into a third, by the Treaty of *Vienna*, in the Year 1731; for even there, I must think, that we ought to have had several Things settled with the Emperor, before we had engaged in such an absolute Guarantee of the pragmatic Sanction; and how we got out of this third Trap, I need not mention to your Lordships; but I am afraid, that, by our Method of getting out of it, we have brought ourselves into a fourth, worse than any of the former.

By these Measures, and such like, my Lords, it would seem as if we had endeavoured to unite *France* and *Spain*, and to detach from ourselves every Ally we could depend on. If *France* and *Spain* therefore be united against us, it is we that have done it: If they are not, we have nothing to fear from *Spain*, though we had not one Ally to depend on; and if we have our antient Alliance to depend on, I think, we have nothing to fear from both; notwithstanding the great Pains that has been taken, to represent to us the unfortunate Situation of the Emperor and the *Dutch*. The Emperor, 'tis true, would probably have been in a much better Situation, if we had joined in the Treaty with *Spain* and him, in the Year 1725, instead of forming the Alliance of *Hanover* against him; but, in spite of all the Misfortunes, which our Conduct, and the Fate of War have brought upon him, he is still able to bring great Armies of good Troops into the Field; and, therefore, if he is not ready to assist us, it is not for his want of Power, but his want of Inclination, which, for a Reason every one knows, may not be so good towards us as it was heretofore. And as for the *Dutch*, they are, 'tis true, wise enough not to keep up in Time of Peace any greater Naval Force, nor any greater Land-Army, than they have occasion for; but in case of a War, they could soon furnish themselves with both, and could raise great Sums of Money for that Purpose, notwithstanding the Debt they at present owe, and the Taxes their People now pay. But as the whole System of Affairs in *Europe* has been very much altered of late Years, and as the *Dutch* lie more exposed than this Kingdom to Invasions from their Neighbours, we cannot expect that they will join with us in any War, unless we can procure such an Alliance among the Powers upon the Continent, as will be sufficient for supporting them against any Power that shall attempt to invade them; and I am much afraid, that those amongst ourselves, who, by their late Conduct, have contributed so much to the present formidable State of Affairs in *Europe*, will never be able to procure such an Alliance.

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But I find, that not only the Inability of our antient Allies, but the present formidable Power of *France*, must be brought as an Argument for our tamely submitting to the most heinous Indignities. I shall readily grant, my Lords, that for almost these twenty Years, *France* has been making a very good Use of our Blunders. I shall grant, that by so doing they have greatly increased their Trade, and of late increased their Dominions. But can we think that *France* would support *Spain* in a Claim against us, which would be a bad Precedent for themselves? Will *France* ever submit to have their Merchant-ships searched on the open Seas by *Spain*, or any other Power whatever? Will *France* ever allow *Spain* to prescribe to them, what sort of Goods their Merchant-ships shall carry from one Part of their own Dominions to another? No, my Lords, they will never so much as treat of any such Claim: They will never be so weak as to refer such a Claim to be regulated by Plenipotentiaries; and they know that, if they should assist *Spain* in establishing such a Claim against us, it would soon be made a Precedent for setting up the same Claim against them. But suppose *France* should join with *Spain* in a War against us, if we are united amongst ourselves, and governed by a wise and vigorous Administration, we have nothing to fear from both. They can attack us no Way but by Sea; and upon that Element we are superior to both. Our Trade has been carried on, and has flourished in Time of War: It has flourished more in Time of War, than it has lately done in what some amongst us have called a Time of Peace. We have a Navy to convoy and protect our Merchant-Men; and by a proper Disposition of our Naval Force, we might make it dangerous for any foreign Privateer to set her Nose to the Sea: From hence we may reasonably suppose, that few or no Privateers would any where appear against us; for as Privateers are generally fitted out by private Men for the sake of Plunder, none such will be fitted out, when there is great Danger, and little to be got; therefore, if the Seas should swarm with Privateers, it would be with Privateers under *British* Colours, which would oblige our Enemies to give over all Manner of Trade; for if they should carry on their Trade by single Ships, they could not protect themselves against our Privateers; and if they carried it on by Fleets and Convoys, they could not protect themselves against our Squadrons of Men of War. This would put an entire Stop to their Trade, which would of Course be a great Encouragement to the Trade of this Kingdom; and as neither *France* nor *Spain* could long support themselves without any Trade, this alone would soon oblige them to submit to just and equal Terms.

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Our Situation therefore, my Lords, with regard to foreign Affairs, is not so terrible as it has been represented. It is, indeed, formidable; but it has become so, not by a vigorous, but a pusillanimous Conduct. And as to our domestic Affairs, I shall most readily admit, that they are not in so happy a Situation as they might have been. A great Part of our Debts might have been paid off, and most of our grievous Taxes abolished, if for these twenty Years past we had kept up no useless Armies, nor fitted out any useless Squadrons. It is this that makes our People uneasy, it is this that foment Divisions among us. To be insulted and plundered by impotent Neighbours Abroad, and at the same Time to be loaded with the Charge of maintaining useless Fleets and Armies at Home; Fleets and Armies which, instead of protecting us, serve for nothing but to prevent our taking Vengeance of those that have injured us: This, I say, would make any People upon Earth uneasy. Change but your Measures, my Lords: Let your Fleets and your Armies be a Terror to your Enemies, instead of being a Terror to your own People; and you will find that every Man will cheerfully pay those Taxes that are necessary for maintaining them. Notwithstanding our bad Management, we could still raise great Sums for supporting a just and necessary War; and, by good Oeconomy, and reducing the Expence of our civil Government, we could apply a great Part of what is now raised to the same Purpose. The People will never grudge the Expence they are put to in vindicating their just Rights and Privileges; but they grudge to see their Substance eat up by useless Officers, or Pensioners, either civil or Military; especially, when they suspect, that those Officers, and those Pensioners, are kept in pay, for no other reason but to take their Substance from them in a legal Way.

Thus much, my Lords, I have been obliged to say of our present Situation, both Foreign and Domestic, in order to shew, that, however low we may be brought by our past Conduct, we are not yet brought so low as to be obliged to accept of a dishonourable Treaty, or to allow our most important Rights to be negotiated away by Plenipotentiaries; but, if it were so, if we were really in such a desperate Condition, would it be proper for this House, could we in Honour begin our Session with any thing that might look like a Compliment upon our past Conduct? Ought we not upon such a melancholy Occasion to begin with an Address in the most general Terms; and immediately after, enter upon an Enquiry into the State of the Nation, and into the Conduct of those who had brought us into such a desperate

Anno 12. Geo. II. 1738-9. desperate Condition? We may see, from what his Majesty has, in his Speech, told us of the Convention, that it is such a one as we ought not to have accepted of, unless we are in the most desperate Condition. Therefore, we must, from what his Majesty has said in his Speech, conclude, that we must either censure the Treaty, or we must enquire into and censure the Conduct of those, who have brought us into such a desperate Condition, as to be obliged to accept of such a Treaty. In these Circumstances, can we put any thing into our Address, that may look like an Approbation of our past Conduct? Can we mention any thing of our late Conduct, especially this Convention, which seems to be the *Coup-de-grace*, I say, can we mention it, without testifying, in some manner or other, our Disapprobation?

I shall always be for avoiding a War, if possible; but the Question is not now about avoiding a War. My Lords, we have already made a War necessary: Our past Conduct has made it absolutely necessary. We have long ago, by our tame Submissions, made the *Spaniards* think, that we dare not go to War. It is from hence, that all our late Grievances have proceeded. We have submitted so long, and have fitted out so many peaceable Squadrons, that they think we dare not strike a Blow; and they are now so much confirmed in this Opinion, that nothing but Striking will make them believe we dare. While they continue in this Opinion, we can expect no equal Terms, nor can we expect they will observe any Terms they agree to. Whilst one Nation has such an Opinion of another, I shall grant that general Treaties, or general Expressions in Treaties, are as good as particular. The Nation that has such a despicable Opinion of its Neighbour, will observe neither; but surely, we are not to confirm *Spain* still more and more in this Opinion, by accepting of such general Terms as we have already found to be ineffectual. We must strike a Blow, if it were for nothing else but to make them alter their Opinion; and, when we do strike, I hope Care will be taken to give them such a Blow as they must remember.

But, my Lords, as the Question now before us is not about what may or must be done, I shall enlarge no farther upon this Subject. I mentioned it only to shew the Ridiculousness of our agreeing to treat or negotiate longer with the *Spaniards* about any thing; and, as his Majesty has told us, that by this Convention we have agreed not only to begin a new Negotiation, but to negotiate about a Claim which we ought never to have allowed to have been brought into any Negotiation; I say, as his Majesty has told us this, in his Speech from the Throne, and as this is what, I hope, no Lord in this

this House will approve of, as it is what, I think, we ought to censure, as it is what we must censure, otherwise the whole Nation will censure us, therefore, I must think that the utmost Complaisance we can shew in our Address, is not to mention it at all; for which Reason, I shall be for the Amendment proposed.

Lord Hervey.

My Lords,

As the Proposition now made to you contains no direct Ap-  
probation, neither of the Convention, nor of any Thing that has been lately transacted; as the Expressions are so general, that, in my Opinion, they do not so much as insinuate, that you do approve, or that you approve of any Part of our late Conduct; I cannot think that your agreeing to what is proposed will meet with any Censure without Doors: I am sure it can meet with no just Censure.

My Lords, the wisest, the most necessary Resolutions we can come to, may be misinterpreted or misrepresented by some seditious or ill-designing Men without Doors; but, to such Misinterpretations or Misrepresentations we ought never to shew the least Regard, unless it be to punish the Authors, as often as they can be detected and apprehended. In all Cases that come before us, we ought to consider and regard only our Duty as Members of this House; and as I think there is nothing in the Address proposed, that can be looked on in any other Light, than as Expressions of our Duty and Affection to our Sovereign, I must think that my Duty, as a Member of this House, obliges me to agree to it without any Amendment. Our agreeing to the Amendment proposed would, in my Opinion, look as if we had, at present, some secret and extraordinary Reason for limiting and setting Bounds to those Expressions of Respect and Esteem for our Sovereign, which are usual upon such Occasions; and, as no Part of his Majesty's late Conduct can furnish us with the least Shadow of Reason for doing so, I shall be against our agreeing to any thing, that may make the People without Doors imagine, or suspect that we have any such Reason.

With regard, my Lords, to the Convention lately concluded between his Majesty and the King of Spain, as it is not yet laid before us, it cannot properly be brought into this Debate. Both within Doors and without, it ought to be judged favourably of, till some Proof to the contrary appears; but if we agree to this Amendment, it will at least make the People without Doors judge very unfavourably of the Convention; and I do not think we ought, without good Grounds, to raise a Suspicion of the Conduct, even of the

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When I am convinced, that our Ministers have done any thing that is wrong, I shall be as ready to disapprove, I shall be as ready to censure, as any Lord in this House; but as it is for the public Good, that our People should have a Confidence in those that govern them, when they deserve it, I shall never be for agreeing to any thing that may lessen that Confidence, till I am fully convinced that they deserve no Confidence; which, I think, none of your Lordships can be; from any thing mentioned in his Majesty's Speech. There is nothing in his Majesty's Speech that can make us judge amiss of the Convention, or of any of the Measures made use of for bringing it to a Conclusion. The searching of our Ships upon the high Seas, is not referred to our Plenipotentiaries, nor is to be regulated by them, or by any other Minister whatever. I do not know that the *Spaniards* ever directly pretended to any such Right. They pretended, and they have a Right to pretend, that none of our Ships ought to carry on an illicit Trade with their Plantations. We pretend the same with regard to our Plantations; and we have a mutual Right to prevent this illicit Trade, by all those Means that are allowed by the Law of Nations; but the *Spaniards* have lately made use of such Means, as are not allowed by the Law of Nations, such as are inconsistent with the Freedom of our Trade and Navigation.

This, my Lords, is what we complain of: This is what we justly complain of: This is the present chief Dispute between us and *Spain*, and this is not only a Point that admits of a Discussion, but a Point that cannot be settled without a Discussion. We must concert together what Means they may make use of, what Means we may allow them to make use of, for preventing an illicit Trade between the Subjects of the two Nations. This is not to be settled at once, nor is the Question to be answered by a Yes or a No. They must, on their Part, take care, that no back Door is left open for carrying on a contraband or illicit Trade, under the Pretence of a free and uninterrupted Navigation; and we, on our Part, must take great Care, that no Pretence shall be given to the *Spanish Guarda Costas* for interrupting our lawful Trade in the *American Seas*, by any Measure they may think necessary for guarding their Coasts against a contraband and unlawful Trade. Your Lordships must see that this a Point which requires great Deliberation; and this only is what is, by the present Convention, referred to be regulated within a limited Time by Plenipotentiaries.

In this, my Lords, there is nothing dishonourable, there is nothing disadvantageous to the Nation. If the *Spaniards* should

should insist upon making use of such Methods, for preventing an illicit Trade on their Coasts, as are contrary to the Law of Nations, and inconsistent with the Freedom or Safety of our Navigation in the *American* Seas, our Plenipotentiaries may, and certainly will, refuse to agree to them; and, if they propose no Methods but what we may safely admit of, without exposing our Navigation or Commerce to any Danger, surely your Lordships will all be of Opinion, that we ought to agree to their making use of such Methods rather than go to War, and those Methods must be settled and regulated by a Treaty between the two Nations. If this should appear to be the Case, we should have no Pretence for declaring War against them: Such a War would certainly be unjust upon our Part; because it would be, and by all *Europe* would be considered as a War, for supporting the smuggling Trade, that may be carried on by our Subjects in the *Spanish West-Indies*. It would be the same thing as if *Holland* or *France* should say to us, You shall not take the proper and necessary Methods for preventing the running of Wool out of the Islands of *Great Britain* or *Ireland*; if you do, we will declare War against you.

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There is nothing therefore, my Lords, in his Majesty's Speech, that can induce us to think, that we must censure the Convention lately concluded; and therefore, nothing that can prevent our agreeing to the Proposition now made to us. It was last Session the Opinion of Parliament, it is the Opinion of every Man of Sense in the Kingdom, that all peaceable Methods ought to be tried for obtaining Satisfaction and Security, before we have recourse to Force of Arms. This cannot be done but by way of Negotiation; and in this Negotiation, the King of *Spain* has shewn that he is seriously inclined to do us justice, by his having already, by way of Preliminary, agreed to give us Satisfaction for what is passed. We could not desire a more substantial Proof of his being inclined to give us Security against future Injuries, as soon as such a Security can be contrived, as may be consistent with the Security of his own Dominions in *America*.

This Security, my Lords, is to be granted, and all the other Disputes between us settled, within a limited Time; so that the Negotiation can be of no long Continuance. A few Months will determine, whether we are to have Peace or War; and if we should at last be obliged to go to War, we shall be able to justify it to the whole World. People may call the Convention a Paper-Peace, or by what other Name they please; but if ever we make Peace, we must trust to Paper, or we can trust to nothing. Negotiations may be supported

Anno 12. Geo. II. supported or enforced by military Preparations; but they must be carried on in Paper; and if we should go to War, 'tis to be hoped we should not always continue in that dangerous and troublesome State. The End of War is Peace; and that Peace must be preceded by a Negotiation, and confirmed by a Treaty, both which must be in Paper. I have often heard of a Paper-War, and there are some amongst ourselves who seem to be fond of it; therefore I am surprized to hear them contain Paper-Negotiations, or a Paper-Peace. With respect to War, the Term may be just; but, since Paper was invented, I never heard of a Peace that was concluded without Paper; and therefore every Treaty and every Convention, may be called a Paper-Peace, as well as the present: There can be no other Sort of Peace; and that which is now begun between *Spain* and us, I hope, will not only be soon concluded, but that it will be a safe, honourable and lasting one.

However, my Lords, as neither the Convention, nor any thing relating to it, can now come properly under your Consideration, I need say nothing more of it at present. I hope, I have shewn, there is nothing in his Majesty's Speech, can make us suspect that the Convention is either dishonourable, or disadvantageous for this Nation. When it is laid before us, we may judge of it with some Certainty; and as there is nothing in the Proposition now made to you, that can preclude any of your Lordships from giving your Sentiments freely about the Convention, when you see it, I think your Lordships are, in Duty to his Majesty, bound to agree to what is proposed without any Amendment.

Lord Bathurst.

My Lords,

Lord Bathurst.

I shall most readily agree with the noble Lord who spoke last, that in all Cases we ought to consider and regard chiefly our Duty as Members of this House; for if we do so upon this Occasion, we must, I think, agree to the Amendment proposed. As Members of this House; my Lords, we are Counsellors to our Sovereign; and as such we are not only in Duty bound to give him our best and most sincere Advice, but also we are bound not to approach the Throne, with any thing that may lead our King into a mistaken Notion of the Wisdom or Conduct of those, in whom he has been pleased to place a Confidence. Therefore if we have a bad Opinion of the Wisdom or Conduct of any such Person, we ought, at least when we approach the Throne, to avoid saying any thing that may tend to make his Majesty believe, that we have a contrary Opinion. In this Light let us consider

sider the Address now proposed, let us consider whether the making of Compliments, even upon his Majesty's late Conduct, will not induce his Majesty to think, that we have a good Opinion of the Wisdom of his Ministers, especially if he be conscious that his Conduct was directed chiefly by their Advice. In my Opinion, our Compliments, upon this Occasion, may in this Way have a very bad Effect; and as I think Sincerity more requisite in a Counsellor than Complaisance, I shall always be for neglecting or avoiding the latter, when I think it inconsistent with the former.

I shall likewise admit, my Lords, that we ought to shew no Regard to the Misrepresentations of seditious and ill-designing Men; but at the same Time it must be allowed, that we ought not to do or say any thing, that may lead the Innocent and Unwary into a Mistake; especially when that Mistake may contribute to make them think amiss of the Wisdom, Honour, or Integrity of this House. The late Convention is not, 'tis true, as yet laid before Parliament; but, my Lords, it is publicly known, and generally condemned. What will the Public, especially the honest and sincere Part of Mankind, think of our returning unfeigned Thanks to his Majesty for telling us that a Convention is concluded, which, even from what he says of it, will be greatly disapproved of by every Man that reads his Majesty's Speech from the Throne? My Lords, your returning unfeigned Thanks for such a Piece of Information, may be a Proof of your Complaisance, but, I am afraid, it will be look'd on by a very few as a Proof of your Sincerity.

My Lords, whatever the noble Lord may have, I must confess I have, at present, an extraordinary Reason for setting bounds to, or rather for entirely avoiding many of those Expressions which have of late Years become usual on such Occasions. It is not indeed a secret Reason: It is a Reason which will be guessed at without doors; and that it may not be mistaken within, I shall explain it to your Lordships. It is because I think our Ministers have made, and advised his Majesty to ratify, a Convention, which, from what his Majesty has told us of it, appears to me, to be both dishonourable and disadvantageous. My Lords, considering the great and repeated Insults which the Crown and Flag of *Great Britain* have met with, it was, I think, dishonourable to agree to any sort of Treaty, without some signal Reparation of Honour: His Majesty does not so much as insinuate, that any such Reparation has been stipulated. Considering the great and extraordinary Charges we were last Summer put

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to, occasioned purely by the Delays the *Spaniards* made in offering us Satisfaction, I think it was both dishonourable and disadvantageous to agree to any Treaty, without stipulating Satisfaction for some Part, at least, of our Charges: His Majesty does not say we have stipulated any such Satisfaction: Nay, he does not say that we have stipulated a full Reparation even for our Losses. And, considering the dangerous and insolent Claim, of a Right to search our Ships upon the high Seas, which the *Spaniards* have not only set up, but of late frequently exercised, I think it was to the last Degree dishonourable, to begin to treat with them, till they had, by way of Preliminary, given up this Claim, in the most express and particular Terms. Considering these Things, my Lords, I think we ought, upon this Occasion, to return to our antient Method of addressing, if it were for no other Reason, but for shewing both to his Majesty and the World, that we are not satisfied with what has been done by his Ministers. This we ought to take the first Opportunity for shewing, and the Manner now proposed is, I think, the most gentle Manner we can chuse for doing it.

I am surprized to hear it said, that the *Spaniards* never directly pretended to a Right of searching our Ships upon the high Seas. My Lords, they have not only pretended to it, but they have actually exercised it. They have exercised it in the most cruel and insulting Manner. Nay, they have gone yet farther, they have seized and confiscated *British* Ships, navigated by *British* Seamen only, and sailing only from one Part of the *British* Dominions to another, for having Goods on board, that are neither contraband, nor prohibited by any Law in the World, but the particular Law of *Spain*. Who gave them a Power, my Lords, to prescribe to us what Goods our Ships shall carry from one Part of our own Dominions to another? Who gave them a Power to subject our Seamen or Merchants to Torture, or to punish them with Loss of Liberty and Estate, though they have never perhaps been in any Part of the *Spanish* Dominions, nor committed any Crime against the Law of Nations?

I know, my Lords, the Pretence set up by the *Spaniards* for searching our Ships upon the high Seas, is to prevent illicit Trade with their Dominions in *America*: and surely, every one that searches a Ship, either in Port or at Sea, must do it on some Pretence, or for some End; but no Nation ever did, or ever will, allow their Ships to be searched on the high Seas by the Subjects of another Nation, on any Pretence, or for any End whatever. The *Spaniards* have a Right,

Right, as every other Nation has, to search, in a lawful Manner, all Ships that enter their Ports. They have a Right, as all other Nations have, to visit Ships at Sea, in order to see that they are not bound to an Enemy's Port, with such Goods on board as are made contraband by the Law of Nations, or by particular Treaty; but this they must do according to Treaty, they must not pretend to search, they must give entire Faith to the Bills of Lading, and even when by them it appears, that there are contraband Goods on board, they can seize those Goods only; they have nothing to do with the Ship or the rest of the Cargo. The *Spaniards* have a Right, by the Law of Nations, and by Treaties subsisting between the two Crowns, to prevent illicit Trade between our Subjects and theirs in *America*: They may seize any *British* Ship that shall be found trafficking in any Port or Haven, possessed by them in *America*; but the Ship must be in some such Port or Haven, and must be found trafficking, or found there without any Pretence of Distress, before they can seize her. They have no Right to search any *British* Ship upon the high Seas, in order to discover whether she has been carrying on an illicit Trade; and the Right as well as Method of visiting for this Purpose, which is a Right entirely distinct, and very different from the Right of searching, remains yet unsettled between the two Nations.

This, my Lords, is the Mistake that has occasioned all our late Disputes with *Spain*. Our Ministers, or at least our Negotiators, have never properly distinguished between searching and visiting, and the *Spanish* Ministers would not; because, while we continued puzzling and treating, they continued, and, I believe, will continue searching and seizing. But, if our Negotiators had understood what they were about, they ought to have insisted upon no Search on the open Seas, as a Preliminary; and then they might have begun to treat about the Method of visiting, and what might be looked on as Signs or Proofs of the Ship's being engaged in an illicit Trade. A Ship's being found hovering upon their Coasts, with broken Bulk, and without any proper Passes or Bills of Lading, or being able to shew a just Cause for her being there, or in that Condition, might, for what I know, have been allowed as a good Reason for Seizure and Confiscation. But in this Case, I hope, no Negotiator would have allowed, that a Ship's having any Sort of Goods on board, should be a Reason for Seizure or Confiscation, if it appeared by the Bills of Lading, that those Goods were taken on board, at any Port or Haven where such Ship might lawfully trade. Every Pretence of this

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Kind ought certainly to have been given up, as well as the Point of No Search, by the *Spaniards*, before we had agreed to treat with them about the Method of visiting, or about any Thing that might be taken as a Proof of a Ship's being engaged in an unlawful Trade; and, if the Dispute between us had, at the Beginning, been put into this Light by our Negotiators, we might probably have prevented a War, as well as the many Losses our Merchants have met with: Whereas we have now, in my Opinion, by the Ignorance or the Blunders of our Negotiators, perplexed this Case so much, we have given the *Spaniards* such a mean Opinion of us, and we have turned the Affairs of *Europe* into such an unhappy Situation; that, I am afraid, we must either agree to a dishonourable Treaty of Peace, or engage in a dangerous and unequal War. In such Circumstances, my Lords, shall we say any Thing to his Majesty, that may make him believe, we have a good Opinion of the Wisdom or Conduct of those who have led us into such a Dilemma?

As for what we have now thought fit to accept of, whether it has been called, or ought to be called a Paper-Peace, is what I do not know. I believe it ought rather to be called a Piece of Paper. I am afraid, my Lords, it will be found to be nothing else. I do not expect to see any one Article of it performed. The noble Lord says, there can be no sort of Peace but a Paper-Peace. From what we have lately experienced one may, indeed, imagine so; but surely, there is as great a Difference between a Paper-Peace and a real Peace, as between a Paper-War and a real War. A Paper-War is a War without any Hostilities; a Paper-Peace is a Peace without any Cessation from Hostilities. A real War is a Commencement of Hostilities, a real Peace is a Cessation from Hostilities. We have, of late Years, made several Treaties of Peace with *Spain*, yet they have continued their Hostilities against us, and they will, I believe, continue to do so, notwithstanding this Convention, unless we keep a Squadron in the *West-Indies*, sufficient to prevent it.

Thus, my Lords, I have explained to you the extraordinary Reason I have for thinking, that upon this Occasion we ought to avoid making use of that Method, or of those Expressions, that have of late Years become usual upon such Occasions. And as this Reason is founded entirely upon what his Majesty has told us in his Speech from the Throne, it is as strong as it could be, were the Treaty itself now before us. What your Lordships may think of it, I do not know; but with me it is a sufficient Reason for agreeing to the Amendment proposed.

The last that spoke in this Debate, was the Duke of Anroz. Geo. II. *Argyle*, to the following Effect.

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My Lords,

In this Debate I have heard many Things which I highly approve of, particularly some Things that have been mentioned by the two noble Lords sitting over-against me. As for that Treaty, that Thing, they call a Convention, I know it is a little irregular to say any thing of it, till it is laid before us; but I know so much of it already, that I can now say, I shall not approve of one Article of it.

However, my Lords, as there is nothing in the Address proposed that can, in my Opinion, be looked on as an Approbation of that Treaty; as it contains nothing but a Compliment to his Majesty, and even that Compliment more carefully expressed, than has of late been usual upon such Occasion; and as I think it necessary upon the present Occasion, and in our present Circumstances, to shew the greatest Unanimity amongst ourselves, and the utmost Regard and Affection for the Person of our Sovereign, therefore I shall be for agreeing to what is proposed without any Amendment.

Several other Speeches were made *pro* and *con*, in the Course of this Debate, which were in Substance as follows.

My Lords,

In antient Times, and I may even say, till of late Years, the Addresses of this House, by way of Return to the King's Speech from the Throne, consisted but of a very few Sentences. They contained only our Thanks to his Majesty for his most gracious Speech from the Throne, and a general Acknowledgment of our Affection and Duty; but that Method has been entirely altered since the Revolution, and we have now fallen into a Way of echoing back the Speech from the Throne, Paragraph by Paragraph, I may almost say, Word for Word. This modern Method I have always thought inconsistent with the Dignity of this House. In my Opinion, it looks more like the fulsome Address of the States of a Province in *France*, to their absolute and arbitrary Monarch, than like the Address of either House of a free and independent *British* Parliament. And for this Reason, I cannot but wish, that your Lordships would return to your antient Method, which I am sure is more consistent with your Dignity, and which can neither upon the present Occasion, nor upon any future, be attended with the least bad Consequence.

The modern Method has, 'tis true, my Lords, been practised for several Years: The Speech from the Throne has for too many Sessions, been punctually echoed back from



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Compliments have generally of late Years been made to the King, upon the Measures pursued by the Administration ; but if this be a bad Custom, it can from no Time derive a Right to our future Approbation ; and that it is so, must, I think, appear at first View, to every one that considers it in its proper Light ; for, from the Nature of our Government, it is impossible for the Majority of this House, to have, at the very Beginning of a Session, any proper Knowledge of what has been lately transacted ; we can have no such Knowledge, till it has been communicated to us by the Crown, and deliberately examined by every Lord that is present, which cannot possibly be done the very first Day of the Session ; therefore, when in our Address of Thanks for his Majesty's Speech from the Throne, we say any thing that may look like an Encomium upon what has been lately transacted, our Compliments cannot so much as be supposed to signify any thing : Nay, it is always allowed, even by those that propose them, that they are not meant to signify any thing ; which, in my Opinion, is a tacit Acknowledgment that no such Compliments ought to be made ; for in private Life, to make such Compliments, is no Argument either of the Sincerity of him that makes them, or of his Respect for the Person to whom they are made ; and if we should afterwards, upon an Enquiry, censure those Measures we had before in our Address approved, or but seemed to approve, I am sure it would be no Argument for shewing the Consistency of our Proceedings. Therefore, if we have a due Regard to the Dignity of this House, we ought to avoid entering into any Particulars, or making use of any Expressions in our Address, that may seem to approve of Measures, which we may, perhaps, in the same Session, find good Reason to censure.

This Caution, my Lords, I think, necessary at all Times ; but upon the present Occasion, I think it is more necessary than it ever was upon any former ; for we have had nothing yet laid before us, that can give us the least Glimpse of Light, into the Measures which the Address now proposed seems to approve of. We cannot pretend to have the least parliamentary Knowledge of our late Transactions ; and, I believe, there are but few, very few of your Lordships, that can in any Capacity pretend to a thorough Knowledge of them. We must therefore now judge by Appearances only ; and if we judge from what is publicly known, I cannot think we have from thence, any great Reason to run out in Encomiums upon our late Management. It is publicly known, not only in this Kingdom, but through all

*Europe,*

*Europe*, which I am sorry to say, that the Nation has for some Years been insulted, our Negotiators trifled with, and our fellow Subjects not only plundered, but barbarously used; and can any of your Lordships pretend to say, from any thing that has been laid before you, or from what has been communicated by our public *Gazettes*, that proper Measures have been taken for vindicating the Honour, repairing the Losses, or securing the Trade of the Nation? These great Ends may, for what I know, be all fully answered by the Convention, which, as his Majesty has told us, has been lately concluded between him and the Crown of *Spain*: I hope they will appear so, when that Treaty, or rather Preliminary, comes to be laid before us. I hope proper Care has been taken by that Convention, to have condign Punishment inflicted upon such of the Subjects of *Spain*, as have plundered or abused the Subjects of this Nation, contrary to the Faith of former Treaties; for without such Punishment, I will be bold to say, that no Reparation can be made for our injured Honour, nor any Security given for our future Safety. I hope the stipulated Payment, as it is called, will appear to be sufficient for answering fully the Losses of our plundered Merchants and Seamen; and I hope, there is a feasible Plan laid down for having all our Rights acknowledged by a definitive Treaty, or at least such of them as have been lately contested. These Things, I say, my Lords, I hope, are all fully provided for by the costly Convention, which we are soon to have the Pleasure of having laid before us; but as I yet know nothing of that Convention, and I believe most of your Lordships know as little of it as I do, I cannot, even in the most general Terms, approve of our having tamely submitted to so many Injuries, for the sake of obtaining a Thing called a Convention, before I know what it is.

As Speeches from the Throne, my Lords, are always considered in this House as Speeches from the Minister, so I cannot but look upon the Addresses made in return to those Speeches, as Addresses, in some Measure, made to the Minister; and, when such an Address contains an Approbation of what has been done, though couched in the most general Terms, I shall always look upon it as an Approbation of the Conduct of the Administration. In this Light, I must consider the Address now proposed, and therefore, I shall treat it with the more Freedom; because, in this Light, his Majesty can be no way concerned, nor can his sacred Character be in the least affected, by any thing I can say against our late public Transactions.

Suppose

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Suppose then, my Lords, that the Word Minister or Ministers, were properly inserted in all those Parts of the Address, which seem to contain an Approbation of our late Conduct: Suppose we were to say, *That amongst the many convincing Proofs, which your Majesty's Ministers have given of their unwearied Care of the Rights of your People:* Would any of your Lordships agree to make such a Compliment, till some of those convincing Proofs had been laid before you? Or can we say, that we have the firmest Dependence on their Zeal and Vigilance, for the Security and Preservation of those Rights, which have been of late so often invaded by *Spain*, before we have seen what Care they have taken of them, by this last Convention? When we consider what Insults the Nation has of late met with, and how long, how patiently, those Insults have been submitted to, can we make any Compliments to our Ministers upon their Fortitude, till it appears from their Negotiations, and from the Issue of those Negotiations, that their Courage has been restrained by their Prudence and Foresight? For, I am sure, if full Satisfaction is not stipulated by the Convention they have accepted, we may applaud their Fortitude in patiently suffering Insults and Indignities, but we can say nothing of their Fortitude in vindicating and protecting our undoubted Privileges of Navigation and Commerce. Reparation for past Injuries and Losses, and effectual Security for the future, are what this Nation ought, what we must insist on: But, can we say, that these have been the great Views of our Ministers, before we know a Word of the Convention, by which that Reparation and Security ought to have been stipulated? I hope, my Lords, when the Convention comes to be laid before us, it will from thence appear, that they well deserve all these Compliments; but, till we have seen and examined the Convention, I must think it a little premature to make any such.

If I were entirely ignorant, my Lords, not only of our late Negotiations, but of all our Negotiations and Treaties for these seventeen or eighteen Years past, I might, perhaps, put a little Confidence in what our Ministers and their Friends have been pleased to tell us privately of this last Convention; I might, perhaps, believe, that we have obtained all we can wish or desire, as has been confidently reported by some Persons without Doors; but, though I am ignorant of our late Negotiations, and of the Terms of the Treaty or Convention, in which they have terminated, yet, I am not entirely ignorant of our preceding Negotiations and Treaties, nor of the Success with which they have been attended; and, the Knowledge I have of  
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them is so far from furnishing me with any Argument for blindly approving of what has been lately done, that it renders me suspicious both of the Convention, and of the Measures that were taken for bringing it to a Conclusion. I can hardly believe, that the Conduct of those who have been so long amused with Negotiations, and so often bamboozled with Treaties, will appear to be without a Flaw in this last Step, which they are pleased to represent as the Master-piece of their Politics.

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Let us, my Lords, but take a View of the many Negotiations we have carried on, and the many Treaties we have concluded, within these last twenty Years; and, from them, I believe, we shall find but little Encouragement, to expect any great Matters from what has been lately done. In the Year 1721, we put an End to our War with *Spain*, by a Treaty of Peace; in which we acted a most generous Part: We gave up to them all the Advantages we had made by the War, I mean, the few Ships we had taken from them; and that, without being obliged so to do, by any Sort of bad Success in the War: And though *Spain* had, upon the War's breaking out, seized *British* Ships and Effects in her Dominions, to a great Value, contrary to the Faith of former Treaties, by which the Subjects of both Kingdoms respectively were, in Case of a War, to have had six Months to retire with their Effects, yet we contented ourselves with stipulating only a simple Restitution. These were Terms extremely favourable for *Spain*; and yet, it is well known, they never made good the Restitution they had promised, nor did they observe the former Treaties, which, by that Treaty, were confirmed and ratified; but continued, under various Pretences, to infest our Trade in the Bay of *Campeachy*, and other Parts of the *American* Seas, as they had done for some Time before; and though we had it always in our Power, to enforce the Performance as well as Observance of Treaties, yet we trusted entirely to Negotiation, and negotiated at the Court of *Spain* for a free Enjoyment of our Rights in *America*, and for full Satisfaction to our *South-Sea* Company and other injured Merchants, for four Years, without any Success; for, as we had a Minister there, I must suppose he had Instructions to take some Care of our Merchants, and of our Trade and Navigation; and our bad Success in these Negotiations was the more inexcusable, because, if we had accepted of the sole Mediation of all the Differences then subsisting between the Emperor and *Spain*, which was offered us during that Interval, we might have easily accommodated all our Dif-

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ferences with the Court of *Spain*; and might have established the Affairs of *Europe* upon such a Footing, as would have greatly contributed to the Security of the Balance of Power in *Europe*, and to the Interest and Glory of this Nation.

About four Years afterwards, my Lords, our Ministers got by chance an Account of a Treaty concluded at *Vien-na*, between the Emperor and *Spain*; and though a Conjunction and firm Friendship between these two Powers, is what this Nation ought to desire and cultivate as much as possible, yet I do not know by what Information, or rather by what Fatality, our Ministers took it into their Heads that this Treaty was designed against us; which induced them to enter into that most extraordinary Treaty or Alliance concluded at *Hanover*, in the Year 1725; and though that Treaty appears to be only a defensive Alliance, yet we immediately took from thence an Occasion to fit out powerful Squadrons, and to send them in a hostile Manner, though, as has since appeared, with peaceful Instructions, to the Coasts of *Spain*, both in *Europe* and *America*, before they had made the least Attempt against us, or any of our Allies. As *Spain* was still owing great Sums to our *South-Sea* Company and other Merchants, by Virtue of the Treaty I have mentioned in 1721, and as they had been for several Years contesting some of our most valuable Rights and Privileges in *America*, one might have expected that these Squadrons, since we had fitted them out, would have been made Use of for compelling the Court of *Spain* to make full Satisfaction to our Merchants, and to acknowledge our Rights in *America*; but these, it seems, our Ministers thought were Trifles not worth contending for; and as they thought, that our sending such Squadrons to the Coasts of *Spain*, was no Infringement of the Peace subsisting between us and that Nation, they gave no Orders to these Squadrons, either to begin Hostilities, or to attempt to compel the *Spaniards* to do any thing, for fear of breeding a Rupture between the two Nations. But *Spain* look'd upon our sending them such unwelcome Guests in a very different Light: They considered it as an open Rupture, therefore they immediately seized all our Merchant-ships and Effects, both in *Spain* and *America*, and began Hostilities against us both by Sea and Land. This, one would have thought, afforded us an excellent Opportunity for beginning Hostilities in our Turn, by which, if they had been carried on in a vigorous Manner, we might soon have forced *Spain*, then without any one Ally that could hurt us, to make full Atonement both for the Breach of Treaty she had

had then committed in seizing our Merchants Effects, and for the Non-performance, as well as Non-observance, of the Treaty in 1721. But, though we had put ourselves to great Expence in procuring the Accession of several Princes and States to the Treaty of *Hanover*, and in augmenting our Forces both by Sea and Land, yet, instead of beginning to Fight, we began to Negotiate; and, by our Dexterity in that Way, some preliminary Articles were, in about two Years, settled and agreed on between the Emperor and the Allies of *Hanover*, which begot a new Negotiation, in order to obtain the Accession of *Spain*; and that Negotiation, in about a Year more, brought forth the Convention between *Spain* and us, signed at the *Pardo*, in *March* 1728: This again begot a new Negotiation, which, in about a Year and a half, ended in the famous Treaty of *Seville*, by which we not only re-united the Crowns of *France* and *Spain* in a close Friendship, but joined with them in a Sort of Alliance against the Emperor; and all this, without having ask'd the least Re-imbursment for the Charges, we had put ourselves to, and without obtaining any Satisfaction for our Merchants, or any explicit Acknowledgment of such of our Rights or Privileges in *America*, as had been contested by *Spain*.

'Tis true, my Lords, by this famous Treaty of *Seville*, all former Treaties were renewed and confirmed; by which, I remember, it was at the Time of that Treaty pretended, that all our Rights and Privileges were acknowledged; but from the Example of the Treaty in 1721, we might have seen, how precarious such a general Acknowledgment would prove, and our Experience, since that Time, has confirmed what we had then good Reason to suspect; for, since the Conclusion of the Treaty of *Seville*, the *Spaniards* have been more daring in their Insults, and more frequent in their Depredations, than ever they were before that Time; which was, indeed, foreseen by almost every Man in the Kingdom, except the Friends of those who negotiated that wise Treaty; and I may prophesy that if ever we make a new Treaty, without having the Privileges of our Navigation and Commerce expressly and particularly declared and acknowledged, our Possession of them will become more precarious than ever it was heretofore; nay, I do not know but the *Spanish* Encroachments and Depredations may be multiplied in *America*, and at last extended to *Europe*.

I shall likewise grant, my Lords, that by this Treaty, the Effects of the *South-Sea* Company, and of our other Merchants, which had been seized by the *Spaniards* in

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their Dominions, when they thought fit to begin Hostilities against us, were stipulated to be restored; and Commissaries were to be appointed for examining and deciding all Pretensions upon either Side; but the Treaty in 1721 ought likewise, in this Case, to have been a Warning to us, not to trust much to the Performance of such Stipulations; and, Experience has since shewn, that we ought to have taken that Treaty as a Warning; for, though the *Spaniards* themselves admit, that there is about 300,000 *l.* due by them to the *South-Sea* Company, and upon a fair Account, I have some Reason to believe, the Company could make it appear to be treble that Sum; yet, the Court of *Spain* is now, after nine Years Forbearance, so far from offering to Pay any Part of that Sum, that, we are told, they insist upon the Company's paying a Sum of 68,000 *l.* as a Debt which they pretend to be due from the Company to them. Now, if this be the Case of our *South-Sea* Company, we may easily imagine, how far short our other Merchants have come of having those Effects restored to them, which were so unjustly seized by the *Spaniards*, upon their beginning Hostilities against us in the Year 1726, or upon our beginning Hostilities against them in the Year 1718. And as to such of our Merchants as had been plundered by their *Guarda Costas* in *America*, before the Treaty of *Seville*, few or none of them can be supposed to have met with any Restitution; since the *Spaniards* took Care that the Commissaries should never come to any Settlement or Decision, with regard to any of the Pretensions that were referred to them.

And now, my Lords, I have mentioned Commissaries, I must observe, that from that very Article in the Treaty of *Seville*, which regulates the appointing of Commissaries, it appears to me, that those who drew up that Article, either designed that the Commissaries should never be able to decide any thing, or otherwise that our Commissaries should give up a Point which, indeed, seems to be given up by that Article; but it is such a one as, I hope, no *British* Subject will ever dare to give up in express Terms. In that Article it is said, "That the Commissaries shall likewise examine and decide, according to the Treaties, the respective Pretensions, which relate to the Abuses that are supposed to have been committed in Commerce, as well in the *Indies*, as in *Europe*, and all the other respective Pretensions in *America*, founded on Treaties," (after which follows this remarkable Sentence) "Whether with respect to the *Limits*, or otherwise." Now, my Lords, I do not remember that, ever since the Year

Year 1670, till within these five or six Years, there has been the least Dispute between the *Spaniards* and us about Limits at Land in *America*; and if there was then no Dispute between us about Limits at Land, I am surprized how our Negotiators came to allow such a Word to be foisted into any Treaty; because the *Spaniards* may from thence pretend, that we have acknowledged the Being of such a thing at Sea, which I hope no *British* Subject will ever admit of; and yet, if there was at that Time no Dispute between us about Limits at Land, I do not know how we could get over this Acknowledgment, any other way than by saying, that this Sentence was foisted into this Treaty by the Artfulness of the Negotiators for *Spain*, and the Ignorance or Carelessness of those that were employed on the Part of *England*.

Thus, my Lords, I have gone through several of those Negotiations and Treaties, we have lately been engaged in, or concluded; and from the few Remarks I have cursorily made, I believe it will appear that we have no great Reason to approve blindly of any Treaty that has been, or can be made by those who had the chief Concern in negotiating or concluding any of the Treaties I have mentioned. By the Treaty in 1721, we made some Concessions, which, I think, we ought not to have made, and trusted to Promises which ought to have been stipulated by Preliminaries, and which we ought to have seen performed before we concluded a definitive Treaty; but as we had then little or no Experience of the Conduct of the Court of *Spain*, the Confidence we put in their Promises was a little excusable; and our Concessions might likewise have been excused, if we could have thereby restored a perfect Harmony between *Spain* and the Emperor, as well as between *Spain* and ourselves. But I cannot say so much for our future Conduct: During the Congress at *Cambray*, we let slip, in my Opinion, an excellent Opportunity for restoring the ancient Amity between the Empire and *Spain*, and for re-kindling that Animosity and Jealousy, which so long subsisted between *Spain* and *France*. By our Treaty of *Hanover*, and the Measures we took in Consequence of that Treaty, we in a Manner declared War, as I still think, without the least Cause, against the two Powers of *Europe*, whose Friendship we ought most to cultivate; and by the Treaty of *Seville*, without obtaining the least Advantage for this Nation, we restored a close Friendship between *France* and *Spain*, and thereby laid the Foundation of that War, which they afterwards, jointly with *Sardinia*, carried on against the Emperor.

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I shall say nothing, my Lords, of our Behaviour during that War, or of the Obligations we lay under by the Treaty we concluded at *Vienna* in 1731; but this I will say, that as we had, by our former Measures, united *France* and *Spain*, while that Union subsisted, it was, in some Measure, necessary for us to keep up a close Alliance and Friendship with the Court of *Vienna*; and if by our Inactivity in that War, (for I shall never call making Treaties, or augmenting our Forces by Sea and Land, Activity,) I say, if by our Inactivity in that War, we lost the Friendship and Confidence of our ancient Ally the Emperor, we thereby gave the *French* and *Spaniards* an Opportunity of triumphing first over him, that they might afterwards have an Opportunity of triumphing over us in our Turn; so that if *France* and *Spain* are now united against this Nation, and we destitute of every Ally, or of such an Alliance as may make the Balance equal, which I hope is not the Case, it may be alleged, that our unlucky Situation is chiefly owing to our late Treaties and Negotiations.

If this be our Case, can we from hence suppose, my Lords, that an implicit Faith ought to be placed in the Conduct of those, who have treated and negotiated us into such Circumstances? If we can neither with Honour continue in Peace, nor with any Prospect of Success engage in a War, can we suppose that any Treaty we make, can be an honourable or an advantageous Treaty? I hope, my Lords, we are not as yet reduced to such a Dilemma; but if we are not, I am convinced it is more owing to the good Opinion some of our Neighbours have of our natural Strength, than to the Wisdom of our own Conduct; and therefore, I cannot agree to pass any Compliments upon our late Conduct, or upon the Convention now concluded with *Spain*, till I am fully convinced, by Perusal and Enquiry, that it is an honourable, safe, and advantageous Treaty. And even suppose it were so, suppose, my Lords, that, from some private Information, I knew it to be so, yet I should be against our making use of any Expressions in our Address, that might look like an Approbation of it, not only because of the bad Precedent, but because it has the Misfortune to labour under a very bad Character without Doors. We have had some pretended Articles of it published in our Newspapers: I hope they are far from being truly the Articles; but whether true or false, the World has from thence conceived a most despicable Opinion of the Treaty; and therefore, though, from some private Information, I were convinced that there was no Ground for such an Opinion, yet I should be against approving it, till the World could have an

an Opportunity of being undeceived, by its being printed and published at full Length; for I shall never be for our doing any thing that may hurt the Character of this House, in the Opinion of the Generality of the People without Doors. At present, most People think that the Payment stipulated by this Convention, is not near sufficient for making good the Losses of our Merchants; and that even the small Sum that is stipulated, is stipulated in such a way, that it must be all paid by ourselves: We must pay, they say, with one Hand, and receive with the other; and this they say, is all that is stipulated; for every thing else, they say, is referred to Plenipotentiaries, whose Negotiations, every one supposes, will end in nothing, as those of our Commissaries formerly did. From hence, most Men take the Liberty to say, that this Convention, this Treaty of Peace, which has cost the Nation so much Money, is nothing but a Scrap of Paper, a Paper-Peace, that will be of no Signification, nor put any Stop to those Hostilities, which *Spain* has been carrying on against us for so many Years.

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This, my Lords, is at present the general Opinion among the People, of the Convention lately concluded; and therefore, out of Regard to the Dignity of this House, and to the Character we ought carefully to preserve among those without Doors, we ought to say nothing in Praise of the Convention, or of the Conduct of those who have brought it about, till the People can be undeceived by a Perusal. For this Reason, I shall beg leave to propose, by way of Amendment, to take only the first and last Paragraphs of the Address moved for by the noble Duke, and to leave out the four intermediate Paragraphs.

Even the last Paragraph, my Lords, I cannot say I entirely approve of; because I think that Paragraph in his Majesty's Speech to which it relates, might have been as well left out. When I say so, my Lords, I consider the Speech, as such Speeches are always considered in this House. I consider it as the Speech of the Minister; and I do not think it right in any Minister to recommend to this House, or to either House of Parliament, not to suffer any Prejudices or Animosities to have a Share in their Deliberations; because it may be thought without Doors, to bear an ugly Insinuation. Some People may from thence conclude, that there is some Danger of our allowing Prejudices or Animosities to have a Share in our Deliberations; which is a Conclusion, that no Person without Doors ought to be by any Means induced or encouraged to make. It is, indeed, a Conclusion that a wicked Minister may be fond of having made; because he will always endeavour to make People believe, that the

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the Opposition that is, or may be made to any of his Measures, can proceed from nothing but Prejudices or Animosities; but this is an Opinion that is, I am sure, as much against the true Interest of the King to encourage, as it is injurious to either House of Parliament to entertain. For this Reason, I do not know but there has been a Time when the Answer to such a Paragraph in the Speech would have been an Address from both Houses of Parliament, to know who advised it. However, I shall at present take no farther notice of it, nor oppose making such an Answer to it as has been moved for.

To which it was answered in Substance as follows, *viz.*

Answer. My Lords,

Whatever was the Method of addressing in ancient Times, or whether it was more general, or more succinct than that now practised, I do not think the Dignity of this House any way concerned in the Question. As long as the Address of this House is supposed to mean no more than a Compliment to the King upon his Speech from the Throne, and a Testimony of our Affection, Duty, and Esteem for him, it is but a Matter of mere Complaisance; and the Form or Method of shewing our Complaisance alters both in public and private Life, like the Fashion of our Cloaths, with Times, Seasons, and Countries. In all such Cases, a Man of a genteel Education, who has no whimsical Turn, will express himself in that Manner, which is most fashionable among those of the better Sort. If he exaggerates very much in his Compliments, and greatly exceeds the usual Method in which Men express themselves upon such Occasions, I shall grant, it is no Argument either of his Sincerity, or of his Respect for the Person he compliments in such a Manner: On the contrary, it may be a Token of his Contempt; for Panegyric, when carried too high, is supposed to be meant in an ironical Way, and then it becomes Satire. But on the other Hand, if a Man speaks more bluntly than is usual in the Times, or in the Country, in which he lives, I hope it will be granted, that it is an Argument either of the Speaker's Want of Breeding, or of his Want of Respect for the Person he addresses himself to.

In this Light, my Lords, let us consider the present Question; and if the Fashion has altered within these twenty or thirty Years, if the Form or Method of shewing our Complaisance to our Sovereign has altered from what it was in ancient Times, do not let us shew either our Want of good Manners, or Want of Respect for him, by addressing ourselves to him upon this solemn Occasion, in a Manner

more blunt than has been usual for so many Years. I shall grant, that his Majesty's Speech from the Throne is always in this House considered as the Speech of his Ministers; but I cannot admit, that the Address of this House, in Return to that Speech, ought ever to be look'd on as an Address to the Ministers. If, indeed, it contain'd an express Approbation of all the public Measures transacted during the preceding Recess of Parliament, it might be supposed to be an Address drawn up by the Ministers, and it would be inconsistent with the Dignity of this House to agree to it, both because of the Persons that might be supposed to have drawn it up, and because of the Approbation it contained; but the noble Duke has, in my Opinion, been extremely careful in drawing up what he has been pleased to offer upon this Occasion. He has, I think, taken particular Care not to insert, in what he has proposed, any Words or Expressions that can, by any sort of Interpretation, be taken as an Approbation of any of the Measures lately pursued by the Administration. It contains only general Compliments to his Majesty, upon what he has been pleased to communicate to us by his Speech, and upon some of those good Qualities, which every Lord in this House must allow his Majesty to be endued with to an eminent Degree. Therefore, my Lords, as his Majesty has made a most gracious Speech from the Throne, as he has been pleased to acquaint us, that a Convention has been concluded between him and *Spain*, and to impart to us the Substance of that Convention; and as he has been pleased to tell us, that he will order the Convention itself, and the separate Articles, to be laid before us; I think we can do no less, than return him such an Answer, by way of Address, as the noble Duke has been pleased to propose.

But, my Lords, that your Lordships may the more clearly see, that there is nothing in the Address proposed, which can be understood to mean an Approbation of any late public Measures, I shall beg Leave to go through and examine it, Paragraph by Paragraph. As to the first, I need say nothing to it; and as to the second, I do not see how it can be supposed to relate to our Ministers, or to any Part of their Conduct. It is, as it ought to be, wholly addressed to his Majesty; and whatever his Ministers may have done, it is certain, that he has given many convincing Proofs of his paternal and unwearied Care of the Rights of his People; and, I am confident, no Man in the Kingdom has a more sincere and affectionate Concern for the Hardships and Injuries our Traders have suffer'd in *America*; no Man would or could venture farther for redressing or preventing them.

Annor 2. Geo. II.  
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His Majesty has given so many indubitable Testimonies of his having equally at Heart the Honour of his Crown, and the Interest of his People, as is well known to all those who have the Honour to be near his Person, that no Man can doubt of his Zeal; and his Zeal must make him vigilant, for the real Security and Preservation both of the one and of the other. This is all, my Lords, that is in the second Paragraph. They are properly no Compliments, they are Declarations of what, I believe, must be the real Sentiments of every Lord that hears me; but supposing they were, they are directed to his Majesty only, and cannot be presumed to be directed or meant to all or any one of his Ministers.

Then, my Lords, as to the third Paragraph: His Majesty has in his Speech said, he has a due Regard to the Advice of his Parliament; and here, by way of Return, we allow this Expression to be a great Instance of his royal Goodness. Has his Ministers any thing to do with this? Can it relate to any Part of their Conduct? We do not say, that even his Majesty has had a Regard to the Resolutions and Advice of his Parliament; we only say, that his expressing such a Regard, is an Instance of his Goodness. Can any thing be more generally or more cautiously expressed? The other Part of this Paragraph, as it is worded, can be supposed to relate only to his Majesty's Inclinations; it cannot be supposed to relate to any thing that has been done, or that has been left undone. His Majesty's Tenderness for his People is well known: It is that only which has preserved this Nation in Peace for so many Years; for, if his Majesty had allowed himself to be directed by his natural Courage and Fortitude, it is certain he would have immediately repented, in the highest Manner, the very first Insult put upon us; and we only say, that we never entertained the least Doubt, but that his Majesty will allow himself to be directed by these Qualities, as soon as he finds that the Interests of his People can be no other Way preserved.

As to the fourth Paragraph, my Lords, it only repeats what his Majesty has been pleased to communicate from the Throne, and returns our Thanks for what he has been pleased so to communicate. This, I think, is the least we can say, by way of Return; and, as there is not the least Word or Expression, that can be supposed to signify our Approbation of any thing his Majesty has communicated, I can see no Reason why we should not agree to it.

Then, as to the fifth, my Lords, his Majesty has told us, in his Speech, that it hath been his principal Care, to make use of the Confidence reposed in him by Parliament, with

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no other View, but the general and lasting Benefit of his Annors. Geo. II. Kingdoms; and, for this, we here return him our thankful Acknowledgments. We do not say, nor so much as insinuate, that his Ministers have had no other Views. If they have had any sinister Views, we are at full Liberty, upon an Enquiry, to censure them, notwithstanding any thing proposed to be said in this Paragraph. But as to his Majesty, I believe no Man will or can suppose, that he could have any other View, than what he has been pleased to declare in his Speech from the Throne; and, if he had, or if it were possible to suppose such a Thing, it would not be pretended, I am sure, by any Lord in this House, that we have a Power to enquire into or censure the Views of our Sovereign.

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And, as to the last Paragraph of the Address proposed, as the noble Lord who proposed the Amendment, was pleased to admit that the last Paragraph should stand as part of our Address, I have no Occasion to say much about it; but, as to the Criticism that has been made upon it, I must say that I can see no Foundation for such Criticism. I hope no Prejudices or Animosities will ever mix themselves with parliamentary Deliberations, I believe they seldom or never do; but, it cannot be said, that the Thing is impossible; and therefore, his Majesty can be thought only to shew his Regard for the public Good, by recommending to us, not to suffer any such to have a Share in our Deliberations, at this important Conjunction. It is not because there is now greater Danger than at other Times, of our allowing Prejudices and Animosities to have a Share in our Deliberations, that his Majesty thought this Recommendation necessary; but, because the present Conjunction is of greater Importance than most others. When the Nation is upon the Brink, perhaps, of a heavy War, when it is in Danger of being engaged in War against one at least, if not two powerful Neighbours, Unanimity amongst ourselves is more necessary, domestic Prejudices and Animosities are more dangerous to the Public, than they can be upon other Occasions; and therefore, it is to be hoped, no Person without Doors will draw any wrong Conclusions from the prudent and necessary Advice his Majesty has thought fit to give us.

Thus, my Lords, I have shewn, that from what is proposed in the Address, we have no Occasion to form any Judgment at all of the Convention just concluded with *Spain*, or of any of our late Measures; because we are now neither to approve or condemn all or either of them. We have, at present, no Business to trouble our Heads about the Conduct of our public Affairs for these seventeen or eighteen Years past,

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or for any longer or shorter Term. We are now only to address his Majesty, as has always been customary, by Way of Return to his most gracious Speech from the Throne; and, if the Address proposed, had been more particular than it is, if it had contained even some sort of Approbation of those Measures which his Majesty has mentioned in his Speech, our addressing in such a Manner might have been justified; for, we are to suppose every Thing to be as mentioned in his Majesty's Speech, till the contrary appears upon Enquiry. By such a Supposition, we are no way precluded from enquiring into the Facts afterwards, or from censuring what shall then appear to be amiss; because nothing that is said in the Address, can be made use of against the Opinion of any Lord, or against any Resolution we can come to, upon an Enquiry. Nay, my Lords, if the Proposition had gone farther, if it had been proposed to congratulate his Majesty upon the Conclusion of this Convention, it would not have been without Precedent; for, if I rightly remember, we congratulated his Majesty upon the Conclusion of the Treaty of *Seville*, before the Treaty, or any Thing relating to it was laid before the House, except what his Majesty had said of it in his Speech at the Opening of the Session. But as no such Approbation or Congratulation is intended, or can be drawn from any Words in the Address now proposed, as it contains nothing, in my Opinion, but what ought in common Decency to be said, by Way of Return to his Majesty's Speech from the Throne, I can see no Reason for our disagreeing to any one of the Paragraphs proposed.

I should not, I believe, my Lords, have troubled you farther upon the present Question, if so much had not been said against the Management of our public Affairs, for almost these twenty Years past; but as it has been found so much Fault with, I hope your Lordships will indulge me with the Liberty of saying a few Words in its Vindication. To answer every particular Objection, that has been made to the several Negotiations and Treaties we have been engaged in for these seventeen or eighteen Years past, would take up too much of your Lordships Time, much more than I think necessary at present, especially as I have already shewn, that no Part of our past Conduct can any Way relate to the Question now before us; but as to all of them in general, so far as I have had any Share in them, I can for my own Part say, that whatever Art may have been wanting in the Method of conducting them, they were all undertaken and carried on with a sincere Heart, and a strong Desire of doing Service to my native Country; and as to all the other Persons concerned, I have the Charity to think, that if any Faults were committed, they

they were not owing to Design or Carelessness, but to such Mistakes and Oversights, as the wisest of Men may sometimes be guilty of. With a Treaty or Negotiation, it is the same as with a fine Poem; it is easy for a willing or splenetic Mind to criticize, and find Fault with the best that was ever made or carried on. No Nation can in every Treaty get all they can desire: They must get as much as they can, and leave the rest to the next favourable Opportunity; therefore, every Treaty may be said to be a good Treaty, when, upon an impartial Examination, it appears to be the best that the then Conjunction of Affairs would admit of. But the Misfortune is, that those who want to find Fault, generally misrepresent the then Situation of Affairs, and at the same Time they endeavour to extenuate the Advantages that were obtained, and to exalt the Value of those which were not; even tho' themselves were, perhaps, the Cause, that some of those Advantages could not be obtained.

If in this Light, my Lords, we examine the Treaties now complained of, and the Objections made to them, we shall, I believe find, that most of the Objections are either groundless or frivolous; and all the Treaties have this Argument in their Favour, they were every one approved of by both Houses of Parliament; which shews, that they were all thought to be good Treaties at the Time they were made, whatever Objections may have since arisen against them, from Alterations in the Affairs of *Europe*, which either could not be foreseen, or could not be guarded against. As for the Treaty in 1721, I need not say much in its Favour; because the noble Lord who found Fault with it, has himself answered the two Objections he made against it. But, I must add, that it was owing to this very Treaty, that *Spain* made us the Offer of being sole Mediator, at the Treaty of *Cambray*, of all Differences between her and the Emperor; so that, if any Honour or Advantage could have been got by our accepting of that Offer, it must have been entirely ascribed to our Treaty with *Spain*, in the Year 1721. However, as our accepting of that Offer, might have involved us in a bloody and expensive War, in which we could not otherwise have had any Concern, and from which we could propose to reap no Advantage, therefore, I am still of Opinion, that it was more prudent in us, to refuse the Offer at that Time made us by *Spain*.

Then, my Lords, with Regard to the Treaty of *Hanover*, I know it has been strongly insisted on, that no secret Articles were agreed on by the Treaty of *Vienna*, in the Year 1725, between the Emperor and *Spain*, which were any way prejudicial to this Kingdom; but we have his late Majesty's express Declaration,



Anno 12. Geo. II. Declaration, that there were some such Articles in that Treaty, which, I think, is a better Authority for believing, than any Authority we have for disbelieving, that there were such Articles. But supposing there were no such Articles, the very Treaty itself shews, that it was designed for supporting the *Ostend East-India Company*; and as both the *Dutch* and we were resolved to destroy that Company, it was evident that the *Vienna-Treaty* would have produced a War, if we had not prevented it by the Treaty of *Hanover*, and the Measures we took in Pursuance of that Treaty, for preventing the Court of *Spain's* being in a Condition to begin a War, or to assist the Emperor, in case he should. By the Squadrons we sent out to the Coasts of *Spain*, in *Europe* and *America*, we prevented the Return of their Plate-fleets from *America*, which rendered all the Projects of the Courts of *Vienna* and *Madrid* abortive, and soon after induced the Emperor to give up his favourite *Ostend-Company*. But as those Squadrons were designed only to prevent a War, therefore it would have been ridiculous to have given them any Orders to begin a War, by attacking *Spain*; and after the Conclusion of the preliminary Articles with the Emperor, we could send no such Orders, because we were every Day in Expectation of coming to a final Settlement of all Differences with *Spain* as well as the Emperor, and thereby establishing the Tranquillity of *Europe*, upon a solid and lasting Foundation.

But, my Lords, as this Settlement, so much to be wished for, was like to be much retarded, if not entirely disappointed, by some new Differences that arose between *Spain* and the Emperor, and as the Peace between us and *Spain* then stood upon an uncertain and precarious Foundation, which could not but be a great Prejudice to our Trade; therefore we found it necessary to conclude a particular Treaty with *Spain*, at *Seville*, in the Year 1729, which leads me to consider the Objections that have been made against that Treaty. It has been said, that after the Experience we had learned by the Treaty with *Spain* in the Year 1721, we ought not in that new Treaty to have trusted to a general Renewal of former Treaties, or to any Promises *Spain* could make: We ought to have had all our Rights and Privileges in *America*, at least such of them as had been contested, particularly acknowledged; and we ought to have had all Promises performed, before we had agreed to a definitive Treaty. My Lords, at this rate no two Nations in the World, after being once at War, could ever agree upon a Peace, till one of them had entirely vanquished the other. We know how much averse Princes are to the making of  
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any particular Acknowledgment : Generally nothing but the utmost Distress can bring them to it ; and therefore, in all Treaties of Peace, it has been found necessary to put an End to most Disputes by general Words, or by a general Renewal of former Treaties ; and where the Words of former Treaties are clear, this general Renewal will always be found as effectual, as the most particular Acknowledgments. A Prince that breaks thro' or evades a general Article, will do the same by the most particular Article that can be framed, as soon as he finds an Opportunity ; and a Prince that will not perform a Promise made by a definitive Treaty, will much less perform a Promise made by a Preliminary. In either Case there is no Remedy but a new Rupture ; and this must at last be the Consequence, if *Spain* cannot be brought to a more strict Observance and Performance of the Treaties subsisting between the two Crowns ; but, both as a Christian and a trading Nation, we are obliged to try first all peaceable Means, and if such Means should be found altogether ineffectual, we must then, and we ought not till then, to have recourse to the *ultima ratio regum*.

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As to our having united *Spain* and *France*, or created a Breach between *Spain* and the Emperor, by the Treaty of *Seville*, I cannot see, my Lords, how that Treaty can be charged with any such Thing. There were no Differences then subsisting between *France* and *Spain*, which were reconciled, nor any just Cause of Offence given to the Emperor, by that Treaty. My Lords, the Union between *France* and *Spain* and the Enmity or Difference between *Spain* and the Emperor, proceed from no Treaties or Negotiations of ours ; they proceed from the natural Course of Things : When *Spain* has any Difference with *France*, she must unite with the Emperor ; and when she has any Differences with the Emperor, she must unite with *France*. The Views she has upon *Italy*, while they continue, must always create Differences between her and the Emperor, and while she entertains such Views, she must necessarily unite with *France* ; but as such Views are inconsistent with the true Interest of *Spain*, as they proceed from a foreign, temporary Cause, a few Years may, in all Probability, put an End to them.

In the mean Time, my Lords, I shall readily admit, that it is our Interest to keep up a close Correspondence with the Emperor ; I shall even admit, that we ought in the mean Time to cultivate this Correspondence by all possible Ways and Means ; but we must not for this End become the Slaves and Servants of the Court of *Vienna*. We are not, for fear of an Alliance between *France* and *Spain* against us, to support the Court of *Vienna* in all the Claims, and in every War,

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War, which their particular Interests may persuade, or their unbounded Ambition suggest. In this Case we may properly be said to be between *Scylla* and *Charybdis*, there is no Safety but in a middle Course; and that, I think, we have hitherto steadily steered. If we had not, if our Ministers had appeared negligent or unskilful, and had steered too near either the one Side or the other, I make no doubt but that this House would have taken Notice of it, and would have turned that Pilot from the Helm, who had shewn that he was not fit for guiding our Ship in the Time of such Danger. As no such Attempt was ever made, as this House has approved of every Step of our past Conduct, it is with me a strong Argument, that the Conduct of our Ministers, even for these last seventeen or eighteen Years, has been blameless. Nay, I have such a Regard for, and such a high Opinion of the Wisdom of this House, that I shall always be extremely diffident of my own Opinion, when I find it differs from that which appears to be the Opinion of this House.

Therefore, my Lords, if we have a due Regard to what appears to have been the Opinion of Parliament, we ought to judge favourably of what is passed; and this may furnish us, I think, with a good Reason for supposing that the Convention, which is to be, and, I believe, in a very few Days will be laid before us, is the best that the present Conjunction of Affairs could admit of; for in every Negotiation we carry on, and every Treaty we make, we must have a Regard both to the Situation of our own Affairs, and to the Situation of Affairs amongst our Neighbours. When both these Situations happen to be lucky for us, we may then insist upon high Terms, we may refuse to accept of any but such as may be thought in the highest Degree satisfactory; but when the contrary happens to be the Case, it is not surely a proper Time for us to insist upon Points of Honour, or upon peremptory and express Acknowledgments; we ought in Prudence to accept of equal Terms, rather than plunge ourselves into an unequal War.

With this View, my Lords, let us examine the present State of Affairs both at Home and Abroad. At Home we still lie under a heavy Load of Debt, and our People groan under a multitude of Taxes, which are absolutely necessary, even in Time of Peace, for the Discharge of that Debt, and the Support of our Civil Government. This renders our People uneasy; and there are many amongst ourselves, who are too apt to take Advantage of that Uneasiness, for increasing those Animosities and Divisions, which must always subsist in this Country, because they naturally arise from those Liberties and Privileges our People have still the Happi-  
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ness to enjoy. Can we then say, that our domestic Affairs are at present in a happy Situation? Then with regard to the Affairs of *Europe*, do we not know that the Emperor is now engaged in a heavy and expensive War against the *Turks*? By the Misfortunes of the two last Campaigns, and the Plague's raging in that Country where he is obliged to keep his Armies, he has lost many of his Veteran Troops. Therefore we cannot expect that he would join us in any War we can at present engage in; and if he did, we could expect from him but a feeble Assistance, for he could send us few or none of those Troops that contributed towards our gaining so many Laurels during the last War. Our Neighbours the *Dutch* are exactly in our own Situation; they are loaded with Debts, contracted as ours were, in Defence of the Liberties of *Europe*: Their People are more heavily loaded with Taxes than the People of this Kingdom; and all those Taxes hardly sufficient to support their Government in Time of Peace, and to pay the Interest of the public Funds. Their Naval Force, which was once able to cope even with that of *England*, and which gave us so great Assistance in the last War, is now almost reduced to nothing; and their Land-Army is now so much reduced, that they have scarcely Troops sufficient for the many Garrisons their large Frontiers obliges them to keep. To this let me add, that they are at present far from being united amongst themselves. As they are likewise a free People, they are always subject to intestine Feuds and Divisions, as much as we are in this Kingdom; and these Feuds and Divisions have of late Years seemed to keep equal Pace in both Countries.

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These, my Lords, are the two Powers of *Europe* who are our most natural Allies; these are the two, from whom, in Case of Need, we could expect the most effectual Assistance, and from neither of them could we at present expect any Assistance at all. On the other Hand, let us consider the present Condition of *France*, our great, our most dangerous Rival in Trade, as well as Power. By the Arbitrariness of their Government they have got rid of all those Debts, which they were obliged, during the late War to contract. They maintain in Time of Peace a much greater Land-Army than any other Power in *Europe*, than most are able to maintain in Time of War; they have always a formidable Fleet ready to put to Sea; and yet their public Revenue is more than sufficient for answering their public Expence, and might be greatly increased in case of a War. If they should join with *Spain* in a War against us, it is hardly to be expected that, in our present Circumstances, we should be able, by ourselves alone, to support a War against these

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two powerful Kingdoms. But in Case of a War between *Spain* and us, suppose the *French* should remain neutral, which 'tis to be hoped they would, and the utmost we could expect, yet we ought to consider how much they have encroached upon several Branches of our Trade, within these few Years past; how closely they are watching all Opportunities for making farther Encroachments. For this Purpose a War between *Spain* and us, while they are in profound Peace, would afford one of the best Opportunities they could desire. The *Mediterranean*, the Bay of *Biscay*, the *African* and *American* Seas, perhaps our own Coasts, would swarm with *Spanish* Privateers, or at least with Privateers under *Spanish* Colours, by which our Trade would be greatly interrupted: Our Merchants would be exposed to many Dangers, to long Delays, and vast Charges, which the *French* Merchants would be entirely free from. This would give them such an Advantage at all foreign Markets, that they would under-sell us in almost every Commodity we could carry thither; and if Trade should once leave the *British*, and begin to run in the *French* Channel, we should probably soon see a Return of Peace, we should be obliged to sue for it upon any Terms; but I question if we should ever see a Return of Trade.

The present therefore, my Lords, must be allowed to be a Conjunction that will not admit of our insisting upon so high Terms, or so ample a Satisfaction, as we may have good Reason to insist on; and if it were, we should, even at the most favourable Conjunction, take Care to persuade the World, that we ask nothing but what is just and reasonable; for if by insisting upon Terms too high, or engaging too rashly in War, our Neighbours should begin to imagine, that we were resolved to make use of our Power for imposing Laws upon any one of them, they would all take the Alarm, every one would be afraid lest his own Turn might be the next; and this might produce a Confederacy against us, as dangerous as that which was produced by the Ambition of *France* against that Kingdom, towards the Close of the last Century.

I shall grant, my Lords, that we have of late Years met with several Insults and Indignities from the *Spanish* *Guarda Costas* in *America*, and that under the Pretence of guarding against what they call illicit Trade, they have too frequently made unjust Seizures, and committed great Depredations upon our Merchants and Seamen, trading in that Part of the World; but we are not the only People that have suffered by such Pieces of Unjustice. We have, it is true, suffered more than any other Nation, because we have

have a greater Trade, and more trading Ships in the *Americas* than any other; but both the *Dutch* and *French* have likewise had their Share. We have heard both of *Dutch* and *French* Vessels seized or plundered, and if News-Papers and News-Mongers were as numerous in *France* or *Holland*, as they are in *Britain*, or if they had the same Liberty in those Countries, they have in this, we should probably have heard of a great many more. One *French* Vessel we heard of lately, which appeared to have been seized and confiscated, as unjustly as ever any *British* Ship was, and tho' it be now two or three Years since the Seizure, the Ship and Cargo are so far from having been restored, that I do not know if they have been reclaimed. Yet neither the *Dutch* nor the *French* have thought of declaring War against *Spain*, on account of such Seizures; nor ought we, as long as there are any Hopes left of obtaining Redress by peaceable Means; for the Crimes of particular Men, ought not to be retaliated upon a whole Nation, till the Nation has made the Guilt its own, by an obstinate Denial of Justice; and this we cannot pretend to say, if any Satisfaction has been made for past Injuries by the late Convention, and a tolerable Foundation laid for securing us against future, by a definitive Treaty.

But, my Lords, as the Convention is not yet laid before us, as it cannot, from any thing now proposed, be properly brought into our present Debate, I shall say nothing in its Justification. From what I have said in Vindication of our past Transactions, I hope it will appear, that we have no Reason to condemn, or even to suspect what has lately happened, before we know what it is. When the Convention comes to be laid before us, we may then judge reasonably and certainly of it: Till then, we ought to suspend our Censures as well as Applauses; the Time will not be long. Perhaps the only Reason why it was not this Day laid before us, was, lest a Pretence should be from thence taken for drawing it into this Day's Debate: This was a prudent, and appears now to have been a necessary Consideration; and as nothing is now proposed, that may in the least tend to justify the Convention, or any of the Measures that were taken for bringing it to a Conclusion, I shall therefore be for agreeing to the Proposition without any Amendment.

After this Debate, the Question was put upon the Amendment, which being carried in the Negative, the Address, as first proposed, was agreed to, and was as follows:

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Lords Address.

*Most Gracious Sovereign,*

**W**E your Majesty's most dutiful and loyal Subjects, the Lords Spiritual and Temporal in Parliament assembled, beg leave to return your Majesty our humble Thanks for your most gracious Speech from the Throne.

Amongst the many, convincing Proofs, which your Majesty hath given of your paternal and unwearied Care of the Rights of your People, nothing can fill their Hearts with more grateful Sentiments, than that sincere and affectionate Concern, which you have so often declared, for the many Hardship and Injuries sustained by your trading Subjects in *America*. The Honour of your Majesty's Crown, and the true Interest of your People, are, and ever will be, inseparable; and as your Majesty hath, on all Occasions, demonstrated to the World, that you have both equally at Heart, it was impossible for us, not to have the firmest Dependence on your Zeal and Vigilance for their real Security and Preservation.

The gracious Regard which your Majesty is pleased to express for the Resolutions and Advice of your Parliament, is a great Instance of your Royal Goodness; and though your Majesty's constant Desire, out of Tenderness to your People, to avoid involving these Kingdoms in the manifold Inconveniences of War, must incline you to approve the beginning with more moderate Measures; yet we never entertained the least Doubt, but that your Greatness and Fortitude, which inspire your Royal Bounty, would induce you to exert your utmost Power, in vindicating and protecting our undoubted Privileges of Navigation and Commerce; and in doing Justice to yourself and your Subjects, if the Conduct of the Court of *Spain* had made such Measures necessary,

We beg leave on this Occasion, to offer to your Majesty our unfeigned Thanks for your great Goodness and Condescension, in acquainting us from the Throne, that a Convention is concluded and ratified between your Majesty and the King of *Spain*, whereby Reparation is agreed to be made to your Subjects for their Losses, by a certain stipulated Payment; and Plenipotentiaries are appointed for regulating, within a limited Time, all those Grievances and Abuses which have hitherto interrupted our Commerce and Navigation in the *American* Seas; and that your Majesty will be pleased

pleased to order the Convention and separate Articles to be Anno 12. Geo. II.  
laid before us. 1738-9.

We shall fall short of those warm Impressions of Gratitude, which we feel in ourselves, as well as be wanting in our Duty, if we did not return your Majesty our most thankful Acknowledgments for your Royal Care, in making Use of the Confidence reposed in your Majesty, with no other View, but the general and lasting Benefit of your Kingdoms. Reparation for past Injuries and Losses, and effectual Security for the future, founded in Justice, and warranted by Treaties, have been the great Views of your Majesty, and your Parliament, in this national and important Affair; and if those Purposes can be attained, without plunging the Nation into a War, it must give the truest Satisfaction to all your faithful Subjects, who cannot but be as desirous to preserve the Peace, as they are able and ready to defend and vindicate their Rights, against the Encroachments of all Aggressors.

We are deeply sensible, how unbecoming it would be, at any time, to suffer either Preliminaries to mix themselves with parliamentary Proceedings, or your Majesty's gracious Recommendation, or Am- particularly to avoid them at this important Conjunctions; not fail to awaken in us a more than ordinary Care, that Head. Great Britain hath but one common Interest, consisting in the Security of your Majesty's Person and Government, and the Welfare and Happiness of your People. And when your Majesty is pleased to exhort us to Unanimity, it is only calling upon us to unite for our own Preservation. We therefore beseech your Majesty, to accept the strongest and most affectionate Assurances, that we will zealously and cheerfully concur in all such Measures, as shall be most conducive to those great and desirable Ends.

His Majesty's most gracious Answer.

My Lords,

" I Thank you for this dutiful and affectionate Address, His Majesty  
" and for the Dependence you express on my Care, Answer.  
" to make use of the Confidence you repose in me, for the  
" general Benefit of my People. You may rely on the  
" Continuance of my Endeavours to perfect the Accom-  
" modation with the Court of Spain, in such a Manner, as  
" may



Anno 12. Geo. II. " may be most for the Honour of my Crown, and the true  
 1738-9. " Interest of my Kingdoms; and that I will pursue such  
 " Measures, as shall appear to be most conducive to the  
 " future Security of the Trade and Navigation of my Sub-  
 " jects."

The same Day, the following Peers took the Oaths and  
 their Seats in the House; viz. the Earl of *Rockford*, Lord  
 Viscount *Townsend*, Lord *Raymond*, and the Right Reverend  
 Dr. *Butts* Bishop of *Ex*, Dr. *Gore* Bishop of *Nor-*  
*wich*, Dr. *Butler* Bishop of *Bristol*.

Beaufort, 16  
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*An*

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